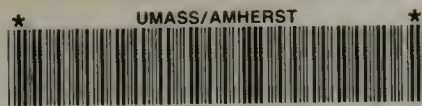


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MASSACHUSETTS
GENERAL COURT



JOINT COMMITTEE
ON POST AUDIT
and
OVERSIGHT

Report
Relative to
Use of Consultants
by State Agencies

Government Documents
Collection
MAY 13 1974

University of Massachusetts

Legislative

Post Audit and Oversight Bureau

JANUARY 15, 1973

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FOREWORD

The Legislative Post Audit and Oversight Bureau was established by Chapter 1008 of the Acts of 1971, as amended by Chapter 247 of the Acts of 1972, as the result of legislation filed by Speaker of the House of Representatives David M. Bartley and supported by President of the Senate Kevin B. Harrington. Its purpose is to conduct, under the direction of the Joint Legislative Committee on Post Audit and Oversight of the Massachusetts General Court, a legislative auditing program with special emphasis on performance auditing. For the purposes of the work of the Bureau, the term "performance auditing" is defined as an auditing program conducted for the particular purpose of making an appraisal or evaluation of the efficiency of operations, the effectiveness of programs, and the faithfulness of administrative compliance with the intent of legislation and administrative regulations affecting a specific agency of the Commonwealth.

The President of the Senate appointed Senator Philip A. Quinn¹¹ as the original Senate Chairman of the Joint Committee on Post Audit and Oversight on January 11, 1972, and, on January 4, 1973, appointed Senator Francis X. McCann as Senate Chairman.

The Speaker of the House of Representatives appointed Representative Gerald P. Lombard as the original House Chairman of the Committee on January

10, 1972, and reappointed him as House Chairman on January 8, 1973.

The first assignment given to the Bureau by the Joint Committee on Post Audit and Oversight was a study of the use of consultants by the Executive Department from appropriations made to the subsidiary account entitled "03 Services — Non-Employees."

This study was conducted by Richard F. Tobin, with the assistance of all staff members.

The report, herewith submitted, concentrates on the presentation of factual information with analysis when necessary, together with findings and substantive recommendations accompanied by drafts of legislation.

On behalf of the Post Audit and Oversight Bureau, I wish to note our appreciation to the staffs of the various state agencies interviewed for their cooperation during the course of the audit and to express our thanks, particularly, to State Comptroller M. Joseph Stacey for his invaluable assistance.

January 15, 1973

William H. Finnegan
Director

¹¹Senator Philip A. Quinn died on August 29, 1972, after the prorogation of the General Court.

SUMMARY

The cost for consultant services rendered to the Commonwealth, which are compensated for out of the "03" subsidiary account, has risen from \$36,000,000 in Fiscal Year 1967 to approximately \$150,000,000 in Fiscal Year 1972. This represents an increase of over 300% in this six-year period. This growth is significant when compared to the increase of approximately 106% for total state expenditures during this same period.

The Joint Ways and Means Committee of the General Court, in accordance with statutory authority, has established the "03" subsidiary account and has defined the types of services available under it and their requisite characteristics. The Legislature, however, has conferred authority upon the Commissioner of Administration to establish rules and regulations for the proper administration of this account.

The title of this subsidiary account, "03 Services — Non-Employees," clearly indicates that the services provided therein are to be rendered by non-employees of the Commonwealth and its purpose is to provide the vehicle whereby the Commonwealth can avail itself of such services, whenever the same are necessary, without increasing the number of its employees and incurring additional expenses for the employee benefits concomitant with state employment. When the description of this account in the Code Manual is read in conjunction with the "Rules and Regulations Governing the Use of Consultants" issued by the Commissioner of Administration in 1964, it is clear that persons compensated out of the "03" account are consultants and, as such, are NON-EMPLOYEES of the Commonwealth.

The Executive Department, however, has not reached this conclusion. Its activities in the use of consultants indicate that it considers many consultants to be, for all intents and purposes, state employees. They are given promotions, step-rate increases, vacation time and sick leave. In addition, fringe benefits are provided including membership in the Group Insurance and Retirement systems at additional cost to the Commonwealth.

It is likewise true that the Executive Department deems the "03" account to be autonomous in nature and that it may expend such funds as it deems desirable, regardless of legislative intent. In response to an inquiry from the Post Audit and Oversight Bureau on this subject, the Budget Director of the Commonwealth replied as follows:

" . . . The AF-C2 recommendations are related to the request and appropriation and, if for a service

not originally budgeted, an attempt is made to analyze the substitution as to need and priority. Frankly, as long as an agency stays within the appropriated 03 amount, it is felt that ordinarily any reasonable substitution is within administrative flexibility and responsibility."

An analysis of the following charts gives ample evidence of the disregard of legislative intent by the Executive Department.

GRAPH 1
FISCAL 1972
COMMUNITY AFFAIRS ADMINISTRATION
(2500-000-03)

		REQUESTED BY DEPART- MENT	RECOM- MENDED BY GOVERNOR	APPRO- PRIATED	EXPENDED
125	Legal	25,000	18,000	5,000	—
149	Other Professional Services	346,000	90,800	78,500	49,928
202	Students. Patients. etc.	110,700	70,000	70,000	—
203	Court Reporters, etc.	3,500	2,000	3,500	—
219	Other Non-Pro- fessional Services	704,800	500,000	476,000	521,456
811	Liabilities	—	—	—	49,616
		1,190,000	680,800	633,000	621,000

GRAPH 2
FISCAL 1972
YOUTH SERVICES — ADMINISTRATION
(1700-0010-03)

		REQUESTED BY DEPART- MENT	RECOM- MENDED BY GOVERNOR	APPRO- PRIATED	EXPENDED
124	Instructors & Lecturers	—	—	—	138
126	Medical, Dental, Vet. and Lab. Services	82,500	50,000	47,000	176,141
149	Other Professional Services	254,750	200,000	200,800	2,467
219	Other Non- Professional Services	—	—	2,200	—
811	Liabilities	—	—	—	62,754
		337,250	250,000	250,000	241,500

GRAPH 3
FISCAL 1972
MENTAL HEALTH — ADMINISTRATION
(5011-0000-03)

	REQUESTED BY DEPART- MENT	RECOM- MENDED BY GOVERNOR	APPRO- PRIATED	EXPENDED
121 Architects and Engineers	7,000	5,000	5,000	300
124 Instructors & Lecturers	10,000	10,000	10,000	2,070
125 Legal	25,000	25,000	25,000	17,060
126 Medical, Dental, Vet. and Lab. Services	1,151,700	935,300	935,000	947,471
149 Other Professional Services	157,700	157,700	155,000	141,925
202 Students, Patients, etc.	14,300	—	—	—
811 Liabilities	—	—	—	64,774
	1,365,700	1,133,000	1,130,000	1,173,600

GRAPH 4
FISCAL 1972
PUBLIC WORKS — ADMINISTRATIVE AND
ENGINEERING EXPENSES (6020-2501-03)

	REQUESTED BY DEPART- MENT	RECOM- MENDED BY GOVERNOR	APPRO- PRIATED	EXPENDED
121 Architects and Engineers	69,200	—	25,000	—
125 Legal Services	23,500	—	1,000	—
126 Medical, Dental, Vet. & Medical Lab. Services	2,000	—	1,000	—
149 Other Professional Services	88,600	—	100,000	83,934
201 Janitors, Cleaners, etc.	101,000	—	—	6,335
219 Other Non- Professional Services	121,064	—	58,000	28,154
811 Liabilities	—	—	—	47,351
	405,364	193,025	185,000	165,773

*Breakdown of "Recommended by Governor" not available for this account.

GRAPH 5
FISCAL 1972
REGISTRY OF MOTOR VEHICLES (6111-0000-03)

	REQUESTED BY DEPART- MENT	RECOM- MENDED BY GOVERNOR	APPRO- PRIATED	EXPENDED
125 Legal Services	500	500	1,000	—
126 Medical, Dental, Vet. & Medical Lab. Services	3,500	—	1,000	400
149 Other Professional Services	265,000	227,192	240,000	3,366
201 Janitors, Cleaners, etc.	90,000	51,750	36,000	66,876
219 Other Non- Professional Services	14,000	14,000	15,000	32,349
811 Liabilities	—	—	—	66,244
	373,000	293,442	293,000	169,235

N.B. \$118,500 was transferred out of this subsidiary to other subsidiaries as follows:

02	80,000	12	25,500
07	500	13	4,000
08	2,000	14	2,500
10	3,000		
11	1,000		

This self-determination by the Executive Department, as to the use to which these "03" funds will be applied, is possible because the Joint Ways and Means Committee of the General Court does not indicate in writing, either to the Budget Director or the Comptroller, the specific purposes for which the amounts appropriated to the "03" account may be expended. As a matter of fact, the Legislature is unsure of the Executive's purposes and the latter is unaware of the intent of the former. Short of outright abolition of the "03" subsidiary account or the imposition of strict statutory requirements, the use of consultants by the Executive Department of the state government can be regulated in two ways: (1) appropriations by the General Court; and, (2) effective control and management of expenditures under this account by the Commissioner of Administration.

With respect to the first area of regulation, the budget procedure followed is not satisfactory. The appropriations are made based upon the Governor's recommendations with little or no written backup material supplied to either the Senate or House Ways and Means Committees by the Chief Executive. In addition, when the general appropriations bill or any other appropriation measure becomes law and the Joint Ways and Means Committee files the necessary schedules with the Comp-

troller, it cannot be determined what the Legislature's intent was with respect to "03" appropriations because the schedule shows the amount appropriated by subsidiary account only. It is not subdivided into object codes. Consequently, the Executive Department is free to make its own determination as to the purposes for which it will expend the funds. Therein lies the autonomous nature of the account. Furthermore, Section 29 of Chapter 29 of the General Laws permits the Executive Department to transfer funds between subsidiary accounts within the same appropriation item. This merely involves a request by the agency with the concurrence of the Cabinet Secretary under whose Secretariat the agency is grouped, to the Budget Director and his approval. This is purely an Executive function and requires no action by the Legislature. This enables the Executive Department to expend funds under the "03" account in excess of those made available by appropriation.

With reference to the second area of regulation, it should be noted that the control mechanisms are available to the Commissioner but that, during the last three fiscal years particularly, succeeding Commissioners have not exercised them.

The net result is a series of abuses which have rendered the intent and purpose of the "03" account meaningless. No longer is it the vehicle whereby special-

ized services are obtained for a particular purpose for a limited specified period of time. It is now merely another method of hiring state employees. In this regard, the Deputy Commissioner of Administration for Personnel in the Executive Office for Administration and Finance, when asked why so many jobs are paid for on an "03" basis, was quoted in the news media as stating that the reason was that the Legislature had failed to create the positions under accounts involving civil service. To paraphrase the Deputy Commissioner, he is saying that, regardless of the fact that the Legislature did not authorize these positions, the Executive is going to fill them anyway. This is accomplished primarily by allowing permanent positions, authorized by the Legislature and funded out of the "01" account, to remain unfilled and transferring the money appropriated for them to the "03" account.

The Legislature has entrusted the operation and control of the "03" account to the Commissioner of Administration and this trust has been violated.

The budget procedure, as it relates to appropriations made to the "03" subsidiary account, needs revision and the administration of the account by the Commissioner of Administration, once the funds have been so appropriated, requires the imposition of strict controls and the demand that the responsibilities imposed in the Commissioner be assumed and executed.

INTRODUCTION

RATIONALE FOR STUDY

The cost to the Commonwealth for consultant services, which are compensated out of the "03" subsidiary account, has increased significantly in recent years. The records of the Comptroller's office¹¹ indicate that during the 1967 fiscal year, expenditures for consultant services approximated \$36,000,000 and that this figure skyrocketed to \$106,000,000 during Fiscal Year 1971.

These records also show that, during Fiscal Year 1972, expenditures for such services amounted to approximately \$90,000,000. This suggests that the Commonwealth reduced its expenditures for consultant services in this fiscal year. Such is not the case.

At the request of Governor Francis W. Sargent, the Legislature, in the appropriation bills passed during fiscal 1971 and 1972, provided that compensation for services of consultants under the Medical Assistance Program (Medicaid) operated by the Department of Public Welfare be paid from a different account, the "07" subsidiary account. This was a departure from the ordinary budget procedure and contrary to the provisions of the Code Manual, which clearly state that Medical, Dental, and Medical Laboratory services of a personal nature, including physicians, dentists and other licensed medical practitioners, be charged to the "03" subsidiary account while all expenditures, other than for personal services and equipment, for medical, surgical and laboratory purposes be charged to the "07" account. Thus, while we do not dispute the Comptroller's records as they relate to the amount of money expended out of the "03" account for Fiscal Year 1972, it must be pointed out that they do not accurately reflect the total amount of money expended by the Commonwealth for consultant services during that period.

The monies for personal services appropriated to the "07" account amounted to over \$35,000,000 in Fiscal 1971 and over \$57,000,000 in Fiscal 1972. Consequently, the actual expenditures for services of consultants as set forth in the "03" subsidiary account in the Code Manual, amounted to over \$141,000,000 during Fiscal 1971 (instead of \$106,000,000) and over \$148,000,000 during Fiscal 1972 (instead of \$90,000,000). This is hardly a reduction in "03" expenditures.

Based upon the Comptroller's figures, expenditures for consultant services have increased over 250% during the last six fiscal years. If, however, the amounts included in the "07" account are included, the percentage of increase amounts to over 300%. This growth is note-

worthy when compared to the corresponding percentage increases of the "01" and "02" subsidiary accounts and total state expenditures.

The "01" subsidiary account (Salaries-Permanent Positions) increased approximately 86%, the "02" subsidiary account (Salaries-Other) increased approximately 78% and total state expenditures increased approximately 106%.

The rapidly increasing growth rate of the "03" subsidiary account, and concern as to the propriety of its use, were the basic reasons for the conduct of this study.

SCOPE AND METHODOLOGY

There are several approaches that can be followed in reviewing consultant practices in Massachusetts State Government.

One is the examination of all state agencies in a specific area of consultant practices. The advantage of this approach is that the resulting presentation would contain a complete package of factual data and would eliminate the need to project findings which would be necessary if only a sample of state agencies was selected. The disadvantage of this approach is that it would be confined to just one aspect of consultant practices and would fail to shed light on the overall system.

A second method would involve an examination and evaluation of all consultant contracts based upon the value derived by the Commonwealth. This would serve a useful purpose but it would be excessively time consuming since, in Fiscal Year 1972 alone, there were over 16,000 consultants employed by the Commonwealth. In addition, this approach would fail to shed light on the overall picture of how "03" funds became available for expenditure.

Still another method would be a systems approach which would allow for an overview of the entire process associated with the use of consultants. This would examine the procedure entailed, on a fiscal year basis, from the time an agency requests funds in the "03" subsidiary account through the time that final approval for the use of consultant services is given by the Commissioner of Administration.

This last, or total systems approach, was selected, and a study was made of the budget procedure, both from an Executive and Legislative standpoint, and the statutes, rules, and regulations governing the use of consultants by the Commonwealth to determine compliance with legislative intent.

¹¹Comptroller's Division, Annual Financial Statement P.D. 140).

Particular attention was paid to the Executive Office for Administration and Finance because it is the focal point in the hiring of "03" services (consultants). The Commissioner of Administration promulgates the rules and regulations governing the employment and compensation of consultants; the Director of Personnel recommends the rate of compensation; the Budget Director verifies the availability of funds for such compensation; and the Comptroller's Division maintains the financial records of payments for such services.

The use of consultants by certain other agencies was reviewed, and the Group Insurance Commission and the State Retirement Board were examined in order to determine whether any non-employees of the Commonwealth (consultants) had been admitted to participation in these state employees benefits and, if they had, to discover the financial impact of the same on the state budget. In addition, the Governor's Public Safety Committee was reviewed because of its unusual policies in using state and federal funds for consultant services.

HISTORY AND LEGISLATIVE BACKGROUND

NATURE OF ACCOUNT

Section 27 of Chapter 29 of the General Laws authorizes the Joint Committee on Ways and Means to establish a schedule of subsidiary accounts within the several appropriation items, and further provides that appropriations by the General Court, and allotments by the Governor, shall be extended only in the amounts prescribed in the subsidiary accounts.

Section 27 of Chapter 29 reads as follows:

“Notwithstanding any provision of general law, no department, office, commission and institution shall incur an expense, increase a salary, or employ a new clerk, assistant or other subordinate, unless an appropriation by the general court and an allotment by the governor, sufficient to cover the expense thereof, shall have been made. Appropriations by the general court, and any allotments by the governor, shall be expended only in the amounts prescribed in the subsidiary accounts, if any, established by, and on file with, the joint committee on ways and means. Said committee, as soon as may be after the general appropriation bill or any other appropriation bill has the force of law conformably to the constitution, shall file with the comptroller and with the budget director, a certified copy of the schedules aforesaid which relate thereto.”

The Joint Ways and Means Committee of the General Court, in accordance with the provisions of this section, promulgated the subsidiary account code manual entitled “Subsidiary Accounts and Expenditure Code Numbers for Budgetary Control,” hereinafter referred to as the Code Manual, established therein the “03” subsidiary account with the several object codes contained therein and defined its purposes as follows:

03 SERVICES — NON-EMPLOYEES

All services and related expenses conforming to the following conditions rendered or incurred by non-employees, except contractual services classified under any other subsidiary account:

I. Professional: The service (a) must be of recognized professional status requiring discretion and judgment in a formal field of knowledge and academic study, training or experience; (b) must be for a limited specified period of time; and (c) must be a service which personnel in the classified service of the Commonwealth ordinarily do not render or are not currently available to render.

- 121 Architects and Engineers
- 124 Instructors and Lecturers

- 125 Legal Services, including Judges
- 126 Medical, Dental, Veterinary and Medical Laboratory Services
- 127 Religious Services
- 149 Other Professional Services:
Includes auditors, accountants, examiners.

II. Non-Professional: All services which meet the conditions of Clauses (b) and (c) of Paragraph I above but not the conditions of Clause (a).

- 201 Janitors, Cleaners and Exterminators
- 202 Students, Patients, Inmates and Institution Residents
- 203 Court Reporters and Secretaries to Special Commissions
- 219 Other Non-Professional Services:
Includes charges for slaughtering animals, equipment inspection (except motor vehicle and power plant boilers), time service (Western Union, etc.), appraisers, monitors, sheriffs, constables, military service, witness fees, artisans, testers and testing service, graders, guides, workers and blind consignors (Div. of Blind). Clerks, typists and stenographers and laborers must be included under 01 or 02 subsidiary.

According to the Comptroller's records, over \$90,000,000 was expended from the “03” subsidiary account during Fiscal Year 1972, of which approximately \$34,500,000 was appropriated by the Legislature. The balance consisted of federal funds, bond issue money, and net transfers to the “03” account, but does not include monies appropriated to the “07” account.

This appropriation figure can be explained in the following manner:

Section 3 of Chapter 29 of the General Laws requires that every officer having charge of any office department or undertaking which receives a periodic appropriation from the Commonwealth, including periodic appropriations to be met by assessments, shall, annually, on or before a date set by the Commissioner of Administration, submit to the budget director statements showing in detail the amounts appropriated for the preceding and the current fiscal years, and estimates of the amounts required for ordinary maintenance for the ensuing fiscal year, with an explanation of any increased estimates.

These estimates are contained on forms prepared by the Commissioner of Administration and are set forth in subsidiary accounts under an appropriation account number and the subsidiary accounts are further subdivided into object codes in accordance with the Code

Manual. The end result is a schedule of estimates presented to the Budget Director setting forth, for each program activity, an appropriation account number, subdivided into object codes, each of which contains the amount expended in the previous fiscal year, the amount appropriated for the current fiscal year, and the amount estimated to be necessary for the ensuing fiscal year. In addition, an explanation of any increase must accompany the estimate. A copy of the estimates is forwarded to the Senate and House Ways and Means Committees.

The Budget Director examines the estimates and makes his recommendations to the Governor. The final determination is made by the Governor and his requests are contained in House 1 which is filed with the Legislature in January of each year as part of his annual budget message.

After the budget message has been filed with the Legislature, a document, commonly known as a 544 Form Book, is forwarded by the Budget Bureau to the Senate and House Ways and Means Committees. This sets forth the appropriation requests from the various departments and the Governor's recommendations. The recommendations, however, are by subsidiary account only and are not further defined by object codes. Thus, any increase or decrease made by the Governor in the amounts requested by the various departments is shown only in the subsidiary account total. It is impossible for the Legislature to determine, from the information contained in the 544 Form Book, just what object codes within any subsidiary account were increased or decreased by the Governor, or why.

Mr. Edwin T. Hebert
Budget Director
Executive Office for Administration and Finance
State House,
Boston, Massachusetts 02133

Dear Sir:

Would you please send us the following information relative to the general appropriation act:

1. What backup material do you send to the House and Senate Ways and Means Committees in regard to any increases or decreases in "03" Services — "Non-Employees" subsidiary requests of departments as reflected in House 1?
2. What backup material do you receive from the House and Senate Ways and Means Committees to indicate the legislative intent behind any increases or decreases in "03" Services — "Non-Employees" subsidiary recommendation as reflected in House 1?

Inquiries made to the Budget Director and to the Senate and House Ways and Means Committees, with respect to "03" recommendations, revealed that appropriations made to this account are based on little or no written information from the Governor. It is further noted that the "03" schedules, forwarded by the Joint Committee on Ways and Means to the Comptroller are by subsidiary account only and do not contain breakdowns of the appropriation items by object codes. When allotments of "03" appropriations are made by the Budget Bureau to the agencies, the allotments are made only by subsidiary account amounts as well. The net result is that the agencies receive what is tantamount to an "Autonomous Account" to use as they see fit. There is no written backup material forwarded by the Governor to the Legislature to justify his recommendations for "03" appropriations, nor is there any direction to the Executive Department by the Legislature as to the specific purposes for which the "03" appropriations may be spent. Furthermore, there is no subsequent direction from the Budget Bureau to the various state agencies at the time the money is allotted.

It is a reasonable conclusion to draw, based upon the procedures followed in the appropriation and allotment of "03" funds, that the Legislature is unsure of the true intent of the Executive and the latter, in turn, has no knowledge of the Legislature's intent.

This conclusion is buttressed by statements from the Budget Director and the Comptroller in response to inquiries by the Legislative Post Audit and Oversight Bureau, as follows:

November 1, 1972

Very truly yours,
William H. Finnegan
Director

November 3, 1972

Mr. William H. Finnegan, Director
Legislative Post Audit and Oversight Bureau
State House
Boston

Dear Sir:

The following is in response to your letter of November 1, 1972:

1. The budget request of each agency is sent to the House and Senate Committees on Ways and Means, including the 03 subsidiary. The recommendations of the Governor are shown on the subsidiary breakdown sheet, which also goes to the said committees.
2. No backup material is received from the House and Senate Committees on Ways and Means. Your attention is drawn to Section 16 of the appropriation act having to do with budget execution of 03 subsidiary.

Very truly yours,
Edward T. Herbert
Budget Director

November 1, 1972

Mr. M. Joseph Stacey
State Comptroller
Room 109, State House
Boston, Massachusetts 02133

Dear Sir:

Would you please send us the following information relative to the general appropriation act:

What backup material do you receive from the House and Senate Ways and Means Committees to indicate the legislative intent behind any increases or decreases in "03" Services — Non-Employees" subsidiary recommendations, as reflected in House 1?

Very truly yours,
William H. Finnegan
Director

November 6, 1972

Mr. William H. Finnegan, Director
Post Audit and Oversight Bureau
State House, Boston

Dear Sir:

In reply to your letter of November 1, 1972, relative to the following question as to the general appropriation act:

What backup material do you receive from the House and Senate Ways and Means Committees to indicate the legislative intent behind any increases or decreases in "03" Services — Non-Employees" subsidiary recommendations, as reflected in House 1,

I advise you we receive no backup material.

Very truly yours,
M. Joseph Stacey
Comptroller

Consequently, it is impossible to determine whether the "03" appropriations and allotments are for medical services, instructors and lecturers, architects and engineers, court reporters, or janitors.

In addition, it is the present practice of the Budget Bureau to allow the agencies wide latitude in the expenditure of "03" funds. Even though the initial requests by the various departments set forth certain purposes, the allotment, when received, is often used otherwise. In response to another inquiry from the Legislative Post Audit and Oversight Bureau, the Budget Director of the Commonwealth, Mr. Edwin T. Hebert, stated, in writing, "Frankly, as long as the agency stays within the appropriated "03" amount, it is felt that, ordinarily, any reasonable substitution is within administrative flexibility and responsibility."

This would usually be classified as a clear violation of legislative intent. This cannot be done in this instance because the legislative intent is not spelled out in clear and definable terms and the Executive Department has taken advantage of this weakness in procedure in order to use the "03" subsidiary account for whatever purposes it sees fit.

PURPOSE OF THE ACCOUNT

The purpose of the "03" subsidiary account is probably best enunciated by the language describing this account in the Code Manual which has been set forth previously in this report.

It should be clearly noted at the outset, and strongly emphasized throughout this report, that the "03" subsidiary account applies only to services to be provided by **NON-EMPLOYEES** of the Commonwealth. The intent of the Legislature was, and is, that these funds are appropriated so that the various departments might avail themselves of the type of services provided for in the "03" account without having to increase the number of state employees and without having to provide the other benefits incidental to employment with the Commonwealth, including group insurance coverage, retirement, vacations, sick leave, and the like.

It is apparent that the Executive Department does not consider this to be the intent of the Legislature but, rather, that the monies, once made available, constitute an "Autonomous Account" which the Department may spend as it sees fit.

There are numerous instances contained herein which give clear evidence that the Executive Department does not consider all persons paid out of the "03" subsidiary account as non-employees of the Commonwealth. In

many cases, persons have been admitted to the State Employee's Group Insurance System and the State Retirement System, or both, with resultant costs to the Commonwealth in excess of the compensation paid out of the "03" funds. Other consultants have been given promotions and step-rate increases during the life of their contract and, in most instances, there have been built-in vacation periods included in the contracts. It is reasonable to assume that sick leave benefits accrue to such "03" payees as well.

REGULATION OF CONSULTANTS

The Commissioner of Administration has the prime responsibility for regulating the use of consultants by the Commonwealth. Section 29A of Chapter 29 of the General Laws mandates the Commissioner to make, and authorizes him to amend, rules and regulations governing such use, and implies the responsibility of enforcement. The language of this section is as follows:

"The commissioner of administration shall make, and may from time to time amend, rules and regulations governing the employment of consultants in all departments and determine the rate of compensation for their services. Such rules and regulations shall be open to public inspection in the bureau of personnel, and copies thereof shall be made available to interested persons upon request. Such rules and regulations shall not be subject to the provisions of chapter thirty A. As used in this section the word "consultant shall mean a person who, as a non-employee, gives professional advice or service regarding matters in the field of his special knowledge or training."

Accordingly, rules and regulations have been promulgated by various Commissioners of Administration in Administrative Bulletins which are distributed to all state agencies. Since April, 1960, there have been twenty-nine Administrative Bulletins issued pertaining to the use of consultants.

The mere establishment of rules and regulations, however, is meaningless unless a strict enforcement policy is adhered to. That such is not the case is evidenced by the fact that the Commissioner of Administration has given himself the privilege of waiving rules and regulations — a privilege which has been used in far too many instances. This not only serves to make a mockery of the law, but destroys its intent and purpose as well.

The net result is a series of violations and waivers of rules and regulations which constitute an abdication by the Commissioner of Administration of his legal re-

sponsibility to maintain controls over "03" expenditures. These violations and waivers will be outlined in this report.

ACQUISITION OF CONSULTANT SERVICES

A vital preliminary to the discussion of this question is a definition of the term "consultant" as it relates to the use of the same by the Commonwealth. The term was defined in an Administrative Bulletin issued by the Commissioner of Administration on December 15, 1964, and reaffirmed on November 18, 1971:

"Consultant" means any *non-employee* of the Commonwealth rendering to the Commonwealth, and receiving from the Commonwealth compensation for, any professional or non-professional service which is described under Subsidiary Account 03 in the Schedule and Description of Subsidiary Accounts authorized by Section 27 of Chapter 29 of the General Laws and most recently approved by the Joint Committee on Ways and Means, *regardless of the source or nature of the funds from which the expenditure for any such service and compensation is made.* (Emphasis added).

This definition clearly demonstrates that any consultant is a non-employee of the Commonwealth. This is true regardless of whether he is paid from "03" funds appropriated by the General Court, from federal funds or from proceeds from bond issues. This is likewise true whether the services rendered are of a professional or non-professional nature.

The initial step in the hiring of a consultant consists in the submission of a written request by the agency involved to the Commissioner of Administration on Form AF-C2 for authorization to hire a consultant. This AF-C2 Form contains the name and address of the proposed consultant, the need for the service, as outlined by the requesting agency, the specifics of the service to be rendered, the duration of the service, the range of compensation, the maximum limit of the obligation proposed to be incurred and any other pertinent information. Form AF-C2 also requires the following:

1. Signature of the Department Head or other authorized person of the agency submitting the request.
2. Signature of the Secretary in whose secretariat the agency in question is located.
3. Signature of the Budget Director verifying the fact that funds are available for the purpose.

4. Signature of the Director of Personnel and Standardization recommending approval of the proposed rate of compensation.
5. Approval of the Commissioner of Administration.

Despite these requirements, the AF-C2 Form is deficient in one very important area! Management Control. For a proper understanding of this deficiency, it is necessary to discuss the Division of Fiscal Affairs within the Executive Office for Administration and Finance.

This Division consists of a budget bureau headed by a budget director, a bureau of personnel headed by a director of personnel and standardization, a management bureau headed by a director of management, and such other administrative units as may be established therein by the Commissioner of Administration.

While there can be no doubt that the expenditure of "03" funds comes within the purview of the fiscal affairs of the Commonwealth, an examination of the requirements for Form AF-C2 discloses that, although the budget director is required to verify the availability of funds, and the director of personnel must recommend approval of the proposed rate of compensation, and the Commissioner of Administration must give final approval, the director of management has no function whatsoever. Furthermore, from a fiscal standpoint, there is no requirement for a certification of need for such "03" services to the Commissioner from any responsible person within the Division of Fiscal Affairs.

In addition to Form AF-C2, the rules and regulations provide that no consultant shall be engaged except pursuant to the following provisions:¹¹

1. A written contract signed by the consultant and state agency setting forth the responsibilities of the parties.
2. A disclosure statement contained in said contract listing all other income derived by said person from the Commonwealth, any political sub-division thereof or public authority therein, from the federal government or any agency thereof, and from any other governmental source.
3. A resumé of the qualifications of the proposed consultant.
4. A statement disclosing the names and addresses of all persons having a financial interest in the proposed contract.

This is the procedure followed, in theory at least, in the hiring of consultants.

¹¹The first three of these requirements may be waived by the Commissioner of Administration. Administrative Bulletin 71-16A — 11/18/71.

It should be noted at this point, however, that Commissioner of Administration Robert L. Yasi, in Administrative Bulletin 71-16A issued by him on November 18, 1971, and in which the requirements of a contract, disclosure statement and resumé were enunciated, granted himself the right to waive any or all of these requirements. This right of waiver has been exercised in all too many cases, as will be outlined in this report.

In addition, it is of little consequence, as far as the Executive Office for Administration and Finance is concerned, whether the AF-C2 form precedes the four requirements stated above. There are many instances in which consultant services have been rendered and compensatory obligations incurred far in advance of the approval of Form AF-C2.

QUALIFICATIONS OF CONSULTANTS

The question then arises, and properly so, as to the qualifications required of a consultant. Specifically, there are none. There are some general criteria outlined in the "03" account in the Code Manual as to what constitutes a professional service and a non-professional service:

Professional Services:

1. Must be of recognized professional status requiring discretion and judgment in a formal field of knowledge and academic study, training and experience.
2. Must be for a limited specified period of time.
3. Must be a service which personnel in the classified service of the Commonwealth ordinarily do not render or are not currently available to render.

Non-Professional Services:

All service which meets the requirements of number 2 and 3 of professional services.

Principal control in the hiring of consultants and the resultant expenditure of "03" funds rests with the Executive Office for Administration and Finance. It is not possible, within the Executive Department for a consultant to be hired and a corresponding expenditure to be made under the "03" subsidiary account without the approval of the Commissioner of Administration.

USE OF CONSULTANTS

CONTROL FACTORS

As stated previously, the prime responsibility for controlling and monitoring the use of consultants by the Executive Department of the government rests in the Executive Office for Administration and Finance and, more particularly, with the Commissioner of Administration.

The Control factors available to the Commissioner derive, basically, from two areas, legal controls and management controls. The former consist of all statutes, rules, regulations and administrative bulletins governing the use of consultants, while the latter consist of a determination of the need for and the subsequent evaluation of the services provided.

With respect to the legal control factor, responsibility has been exercised by succeeding Commissioners of Administration to the extent that rules and regulations governing the hiring of consultants have been promulgated. The basic rules and regulations were instituted in 1964, and these rules are still in force and effect today.¹¹ However, two amendments were issued in 1971 by former Commissioner of Administration Robert L. Yasi.

COMMONWEALTH OF MASSACHUSETTS ADMINISTRATIVE BULLETIN EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

November 16, 1971

71-16

TO ALL AGENCY HEADS:

Effective immediately, the "Rules Governing Employment and Compensation of Consultants" as most recently amended (12-15-64) are hereby further amended by striking out paragraph IV, 4.6. and inserting the following:

"No consultant shall be employed except pursuant to the following conditions:

1. A written contract signed by the consultant and the agency covering the terms of the service to be performed.
2. A disclosure statement contained in the contract listing all other contracts or income derived from the Commonwealth or any political subdivision thereof; the federal government or any agency thereof, and from any other individual or corporation.

3. A resumé of the proposed consultant's qualifications."

One executed copy of such contract and a copy of said resumé shall be attached to and accompany each AF-C2 form submitted to the Commissioner of Administration for approval.

One executed copy of such contract shall be filed with the Comptroller and one such copy shall be kept on file in the agency for public inspection.

S/ Robert L. Yasi
Commissioner of
Administration

COMMONWEALTH OF MASSACHUSETTS ADMINISTRATIVE BULLETIN EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

November 18, 1971

71-16A

TO ALL AGENCY HEADS:

This bulletin supersedes Administrative Bulletin No. 71-16, which is hereby rescinded.

Effective immediately, the "Rules Governing Employment and Compensation of Consultants" as most recently amended (12-16-64) are hereby further amended by striking out paragraph IV, 4.b and inserting the following:

"No consultant shall be engaged except pursuant to the following conditions:"

1. A written contract signed by the consultant and the agency covering the terms of the services to be performed.
2. A disclosure statement contained in the contract listing all other contracts or income derived from the Commonwealth or any political subdivision thereof or public authority therein, from the federal government or any agency thereof, and from any other governmental source, for services rendered.
3. A resumé of the proposed consultant's qualifications.

"One copy of such proposed contract and a copy of said resumé shall be attached to and accompany each AF-C2 form submitted to the Commissioner of Administration for approval.

¹¹Rules Governing Employment and Compensation of Consultants (as amended to December 15, 1964.)

"One executed copy of such contract shall be filed with the Comptroller and one such copy shall be kept on file in the agency for public inspection.

"Any or all of the requirements of this paragraph may be waived with respect to any consultant by the Commissioner of Administration."

S/ Robert L. Yasi
Commissioner of
Administration

It is to be noted particularly that Administrative Bulletin 71-16 was in existence less than 48 hours when Administrative Bulletin 71-16A was issued wherein Commissioner Yasi restated said Bulletin 71-16 in its entirety and then gave himself the right to waive, without reasons, any or all of the requirements set forth therein.

It is the opinion of this Committee that Section 29A of Chapter 29 of the General Laws, which mandates the Commissioner of Administration to make rules and regulations governing the use of consultants by the Commonwealth and authorizes him to amend the same from time to time, confers no right upon the Commissioner to grant to himself the unabridged privilege of waiving any such rules and regulations. It is an assumption of power which is totally inconsistent with the intent of the statute.

The waiver privilege has been exercised on numerous occasions both with respect to this administrative bulletin and other such bulletins. A random sampling of over 400 AF-C2 Forms approved by the Commissioner of Administration between January 3, 1972 and June 30, 1972 reveals that the provisions of Administrative Bulletin 71-16A were waived in 149 of these cases.

It is of particular concern that the Executive Office for Administration and Finance pays little heed to the fact that, not only are the rules governing employment and compensation of consultants being violated, but that administrative bulletins issued by the Commissioner of Administration are being ignored by the Commissioner himself.

By way of illustration:

- 1.) Section IV, Paragraph 3 of "Rules Governing Employment and Compensation of Consultants" provides:

- "3. The employment and compensation of any Consultant under Paragraph 2 above of this Section IV shall require (a) certification by the employing Department that its subsidiary Account 03 contains funds available and sufficient for the purpose of such employment and compensation and (b) verification by the Budget Director that such funds are so available and sufficient (such certification and verification to be made by use of the applicable provisions of Form AF-C2); except, however,

that such certification and verification shall not be required in any case where (a) the employing Department shall have been authorized by the Commissioner on Form AF-C2 to incur a maximum obligation during the current fiscal year for payment for all services of the type involved in the employment, and (b) payment for the employment will not cause the employing Department to exceed such authorized maximum obligation. (Emphasis added).

Accordingly, the Commissioner of Administration authorized the Department of Public Welfare on Form AF-C2 to incur a maximum obligation of \$25,000 for Fiscal Year 1972 for the purpose of providing police protection at various welfare offices whenever the department deemed it necessary.

An analysis of invoices revealed that the Department of Public Welfare expended \$108,176.25 during Fiscal Year 1972 for such police services. The maximum obligation permitted was exceeded by over \$83,000.

Despite the existence of the rule, the State Comptroller, who is a member of the team that comprises the Executive Office for Administration and Finance, does not keep records of expenditures for consultants as they relate to the maximum obligation authorized to be incurred. Consequently, the "autonomous" nature of the "03" account again accrues to the benefit of the agency involved and barring the complete exhaustion of money, the state agency is free to do just about what it pleases.

- 2.) On December 15, 1971, Commissioner of Administration Robert L. Yasi issued Administrative Bulletin 71-18 which provided:

**COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE BULLETIN
EXECUTIVE OFFICE FOR
ADMINISTRATION AND FINANCE**

December 15, 1971

71-18

TO ALL AGENCY HEADS:

Payments to 03 Consultants

Commencing January 3, 1972, no consultant whose services are coded under subsidiary code 03, shall be paid for any such services rendered prior to the date of approval by the Commissioner of Administration of said 03 request.

S/ Robert L. Yasi
Commissioner of
Administration

Contrary to this Bulletin, it was found that, in a number of cases, consultants were paid for services rendered prior to approval of the same by the Commissioner of Administration. When the Commissioner did approve the "03" request, he disregarded the fact that the commencement of service by the consultant was prior to such approval. Consequently, once the "03" request was approved, the consultant received payment retroactive to the date he began rendering service.

This practice was prevalent in the Secretariats of Human Services and Educational Affairs and indicates that the Secretaries involved paid little heed to the provisions of Administrative Bulletin 71-18. As a matter of fact, the Commissioner of Administration ignored his own prohibition because several of the retroactive payments were made to consultants employed by the Executive Office for Administration and Finance. In addition, the same random sampling of over 400 AF-C2 Forms revealed that Commissioner Yasi waived the provisions of Administrative Bulletin 71-18 in 367 (87%) cases. This was done despite the fact that the Commissioner had not even given himself waiver power with respect to this bulletin.

These abuses were brought to the attention of the new Commissioner of Administration in December, 1972, and he issued a subsequent administrative bulletin precluding any further waivers of Administrative Bulletin 71-18 after January 15, 1973.

3.) On February 8, 1972, the Commissioner issued Administrative Bulletin 72-3 relative to the use of consultants by the Commonwealth.

Section 4 of this Administrative Bulletin states:

"Requests for approval of non-employee services on Form AF-C2 submitted on or after February 14, 1972, shall not be considered unless and until the agency head supplies in writing a description of the circumstances constituting an emergency and requiring that the services be obtained prior to the end of the current fiscal year."

Copies of forty-five AF-C2 Forms, approved on or after February 14, 1972, were submitted to the Commissioner of Administration and a request was made for copies of the correspondence describing the circumstances constituting the emergency in each of these instances. The Commissioner's office could only locate thirty-two of the forty-five AF-C2 Forms, but advised that all the requested correspondence would be on file with the Bureau of Personnel.

Inquiry was made at the Bureau of Personnel but this office was unable to produce any such correspondence.

From the standpoint of management control, the Executive Office for Administration and Finance and, in particular, the Commissioner of Administration must be severely criticized. This is the "control area" that determines, a.) the need for consultants; b.) the management audit techniques necessary to evaluate consultant's performance; and, c.) the final disposition of the consultant reports.

Although the management mechanism exists, it is not being utilized. Within the Executive Office for Administration and Finance, there is the Fiscal Affairs Division (G.L. Ch. 7, Sec. 4A) which includes three Bureaus by statute (G.L. Ch. 7, Sec. 4B):

1. Budget Bureau
2. Bureau of Personnel
3. Management Bureau

The Budget Bureau and the Bureau of Personnel are responsible for the review of each and every agency request (AF-C2 Form) for consultant services. The Budget Director must verify that funds are available for the employment of consultants and the Director of Personnel and Standardization recommends that the rate of pay to be given to consultants is consistent with the rates paid to similar consultants working in their particular field of expertise. The final step in the consultant hiring process is the approval of the Commissioner of Administration.

Nowhere in this process is there a certification on the AF-C2 form, by any responsible official in the Fiscal Affairs Division of the Executive Office for Administration and Finance, as to the *need* to engage consultant services. The determination of this *need* should rest, in

our opinion, with the third bureau within the Fiscal Affairs Division, namely, the Management Bureau. Yet, for whatever the reason, this Bureau is not included in the consultant approval process and, in fact, has been administratively removed from its statutory position within the Fiscal Affairs Division. It is presently located in the Office of State Planning and Management, which was created by administrative fiat and not by statute. Consequently, not only is there a lack of management input in the initial hiring of consultants, but, also, there is no evaluation of consultant performance and no evidence that this Bureau reviews the consultants' final product to determine what impact, if any, their efforts have produced. Once again, the Executive has superimposed his will on legislative enactments.

REQUISITES FOR USE OF CONSULTANTS

The Joint Committee on Ways and Means of the General Court, having promulgated the Code Manual establishing a schedule of subsidiary accounts, with accompanying object codes, assigned to each such object code a control number. Object codes for the "03" account are spelled out in detail in the Introduction to this report.

This same committee also divided the types of services available under the "03" account into two categories, viz., professional services and non-professional services, defined their characteristics, and assigned control numbers 121, 124, 125, 126, 127, and 149 to the former and control numbers 201, 202, 203, and 219 to the latter.

The committee also provided that services of clerks, typists and stenographers and laborers shall not be included under the "03" account but must be included either under the "01" subsidiary account (Salaries, Permanent Positions) or the "02" subsidiary account (Temporary Positions). Despite this prohibition, such services have been employed and compensated for out of the "03" account.

The requirements for the use of professional services of a consultant indicates that all three requirements must be met before such use can be approved. The professionalism of the consultant must be in a field directly related to the purpose for which his services are sought.

There are many instances in which the use of consultant services have been approved, despite the fact that one or more of the said requirements have not been met. Little or no attention is paid to clause (b) of the requirements which states that the consultant services must be for a limited specified period of time.

There are, for example, "03" consultants at the De-

partment of Public Works who have been continuously compensated out of the "03" account for 10 years or more, with one individual dating back to 1949. At the Department of Natural Resources, there are consultants whose service has been continuous for over three years, while the Department of Agriculture has consultants whose continuity of service exceeds four years. Other such instances exist in the Division of Youth Services, the Department of Community Affairs, the Government Center Commission, and other agencies of the Commonwealth.

In each of the above instances, the consultant has acquired membership in the state employees' group insurance program upon certification, under the penalties of perjury, by the department head or appointing authority to the Group Insurance Commission that the period of employment of the consultant would be for at least one uninterrupted year of service. In many instances, it was certified, also under the penalties of perjury, that the consultant would continue to be compensated indefinitely from the "03" account.

The provisions of Clause (c) require that the consultant's services must be such that personnel in the classified service of the Commonwealth ordinarily do not render, or are not currently available to render. To be sure, the language of this clause is very broad and general, and it has been used as the escape hatch in setting forth the need for the consultant service as required on Form AF-C2. A major offender in this instance is the Department of Public Works which, in explaining the need for the consultant service, invariably proclaims the absence of qualified personnel in the department.

There are other instances where the provisions of Clause (c) are ignored or avoided. Cases exist where employees of the Commonwealth have terminated their employment and immediately began service as consultants with the same agency on duties similar in nature to those which they had while state employees and, frequently, at a much higher rate of compensation.

Conversely, situations exist where persons, either in the employ of a consulting firm which is under contract to a state agency, or acting as individual consultants conducting a study of a state agency for a third party, have negotiated consultant contracts for themselves with the agency.

One case, however, has come to our attention which raises serious questions of propriety, both legal and administrative. On September 16, 1969, the United States Department of the Interior approved a project proposal of the Department of Natural Resources, Division of

Marine Fisheries, entitled "Massachusetts Commercial Fisheries Extension Service" (3-109-D). The objective of this program was to improve the economic posture of the Commonwealth's fishing industry.

The General Court appropriated the sum of \$50,000 to fund this project for Fiscal Year 1970 and it was subject to 75% reimbursement by the Federal Government. No funds, however, were expended for this project in Fiscal 1970.

The project was again funded for the 1971 Fiscal Year and the sum of \$50,000 was appropriated to the "03" subsidiary account.

The program actually commenced on a consultant basis on February 1, 1971, although funds had been available since July 1, 1970.

The Assistant Director of the Division of Marine Fisheries, Charles E. Martin, in conjunction with two other persons, formed a Massachusetts corporation which was approved by the Secretary of State on October 20, 1970. The name of this corporate entity was "Charles E. Martin and Associates, Inc.", with offices in Gloucester, Mass. Mr. Martin served as President-Treasurer of the corporation. On January 26, 1971, while still Assistant Director of the Division of Marine Fisheries and, as such, an employee of the Commonwealth, Mr. Martin, acting on behalf of the corporation, signed a one year, \$50,000 contract with the Department of Natural Resources to conduct the Commercial Fisheries Extension Service effective February 1, 1971. Signatories for the Department of Natural Resources were Arthur W. Brownell, Commissioner of Natural Resources, and Frank Grice, Director of Marine Fisheries. Subsequently, on January 30, 1971, Mr. Martin terminated his services as a state employee and commenced his consultant services on February 1, 1971.

The facts in this case raise the possibility of a conflict of interest on the part of Mr. Martin and others and, consequently, a report of these findings has been forwarded to the Attorney General for his determination.

The case, in its entirety, is indicative of severe administrative shortcomings and a copy of this section of the report has been submitted to the Secretary of Environmental Affairs so that he may take corrective measures to prevent a recurrence of this type of situation.

The failure of the Executive Office for Administration and Finance to effectively control and monitor the use of consultants by the Executive Department has resulted in the creation of several situations which are less than desirable from a fiscal standpoint.

I SPECIAL "03" PAYROLL

Chapter 658 of the Acts of 1967 reorganized the Department of Public Welfare and provided for the direct administration of the public welfare system by the Commonwealth. Under this reorganization, all employees of welfare departments in the various cities and towns automatically became state employees as of July 1, 1968.

Although the state agency had at least nine months to prepare for the transition, it did not adequately make provision to handle the acquisition of the 3930 local welfare employees. Many problems arose in processing the necessary paperwork and in paying these individuals on time. The problem became so acute that during the months of September and October of 1969, there were approximately 1800 individuals working for the Welfare Department who had not been integrated into the state system. They were being paid on a draw slip basis, which is an authorization for partial payment of an individual's salary. In addition, they received no record of the amount of the withholding, state retirement and group insurance deductions, if any.

In an effort to ease this situation, a meeting was held in October, 1969, at which a special "03" payroll procedure was established. Represented at this meeting were the Comptroller's Division, Treasurer's Office, Administration and Finance, Public Welfare and members of the welfare workers unions. This special "03" payroll was designed as a temporary provision to run for a period of four months, from November 1, 1969, to March 1, 1970, so that employees who were not yet approved for "01" or "02" employment could receive a weekly draw check with a monthly reconciliation and payment of balance due.

The intent was good and the use of this procedure allowed the Department of Public Welfare to integrate these employees into the state system with a minimum of inconvenience. This would not have been possible if the normal methods had to be followed and would have caused an unnecessary hardship on these employees which was not intended by the Welfare Reorganization Act.

Contrary to intent, however, the problem continued unabated. In December of 1970, the Department of Public Welfare entered into a contract for the services of a management consultant firm, Booz, Allen and Hamilton, to conduct a study and develop procedures which would reduce the delays in personnel processing. In January, 1971, the consultants developed procedures for reducing the backlog and issued a report in March, 1971, indicating a reduction from 1976 to 489 in the number of unprocessed personnel transactions. The report fur-

ther stated that there would be little justification for a recurrence of the backlog in personnel processing.

This did not prove to be the case, however. An examination of this special "03" payroll disclosed that there was no gradual decline. On the contrary, the number of individuals whose names appeared increased from 1480 in November, 1969, to 1828 in January, 1971, ten months after it was to have been terminated. It is important to note that many of the persons whose names were included were not former city and town employees but individuals new to state service, and this was the first indication that this special "03" payroll was being used for purposes other than those for which it was intended.

As of June 30, 1971, 15 months after it was to have terminated, there were still 1634 individuals being carried on the "03" special payroll in 103 different types of job positions, including three Assistant Commissioners, at a salary of \$21,730 yearly each, a Medical Advisor at Grade 33 (\$23,085 to \$29,325 yearly), a Special Assistant to the Commissioner at Grade 27 (\$17,984 to \$22,820 yearly), an Assistant to the Commissioner and a Director of Medical Care at Grade 24 (\$15,764 to \$19,991 yearly).

As a result of having to approve a blanket authorization for this special "03" payroll each month, Commissioner of Administration, Robert L. Yasi, on October 29, 1971, 19 months after it was to have terminated, sent the following letter to the Welfare Commissioner, Steven A. Minter:

"Dear Commissioner Minter:

I have before me your 03 of October 15th in the amount of \$773,886 that constitutes a special draw payroll for certain Welfare Department personnel. I understand that this device for paying employees is the result of the confusion following the state takeover from cities and towns in 1968. However, I am deeply concerned that after all this time there still remain over 1,000 employees on this payroll and that every month new names are added. Although there has been some net decrease in the number of employees, 117 new employees, for example, were added in September and 112 in August.

I realize it will be necessary for me to approve your current 03; nevertheless, I wish you to give me a firm date when all employees on this payroll will be allocated to 01 or 02 positions, and I wish you to confirm that no new employees will be added under any circumstances."

As of June 30, 1972, eight months after the Commissioner's letter to the Welfare Department, and 28 months after it was to have terminated, the special "03" payroll

device was still being used. An examination of this payroll revealed the presence of 157 names, including an Assistant Commissioner of Public Welfare at a salary of \$22,664, two Assistants to the Commissioner at Grade 24 (\$16,442 to \$20,857 yearly), and a Personnel Supervisor at Grade 22 (\$14,825 to \$18,881 yearly). Only 26 of the 157 individuals were present in the original contingent of 1480 in November, 1969.

An examination of the November 30, 1972, special "03" payroll revealed an increase to 237 individuals including three Assistant Commissioners of Public Welfare which are statutory civil service positions, none of which has yet been approved by the Division of Civil Service. In fact, a comparison of the qualifications of these three individuals with the statutory qualifications indicated some question as to whether two of the present Assistant Commissioners will be able to meet all of the necessary statutory qualifications to hold the positions.

Although this special payroll device served a useful purpose when it was agreed to in November, 1969, the following should be noted:

- 1.) The special draw payroll has been used by the Department of Public Welfare for a period of over 36 months, far in excess of the original four months agreed to.
- 2.) A review of the special draw payroll since June, 1972, revealed an upward swing with 226 individuals on the July, 1972, special payroll and 299 individuals on the August, 1972, special payroll.
- 3.) The Commissioner of Administration has continued to approve this procedure each month and has not forced the Department of Public Welfare to stop the use of this special payroll device.
- 4.) The employee processing procedures of both the Bureau of Personnel and the Civil Service Commission have been by-passed.
- 5.) Funds made available by the Legislature since March, 1970, for permanent and temporary employee salaries (01 and 02) have been transferred and spent for services — non-employee (03) which was not the legislative intent when the funds were appropriated. For the 1971 and 1972 fiscal years, a total of \$18,016,609.64 was transferred into the "03" account to cover this special payroll.

Once again, the Commissioner of Administration has violated the trust imposed in him. He was a party to the agreement which established this special "03" payroll procedure for a four-month period, from November, 1969, to March, 1970, to compensate those former city and town employees who were absorbed into the state

employees system by the Welfare Reorganization Act. He has allowed this payroll procedure to continue, regardless of the fact that new employees have been added to the present time and has approved this payroll each and every month.

In an attempt to put an end to this situation, the Legislative Post Audit and Oversight Bureau requested a meeting with the Director of Civil Service and representatives of the Welfare Department, Bureau of Personnel, Comptroller's Office and State Treasurer's Office. This meeting was held on December 19, 1972, in the office of the Director of Civil Service.

The ramifications of this special "03" payroll were discussed and the Post Audit Bureau made a request that this procedure be terminated as soon as possible. All of the parties concerned were in agreement that this could be accomplished within sixty days.

The matter was then brought to the attention of the new Commissioner of Administration, William I. Cowin, by the Post Audit Bureau with the request that he order this procedure to be terminated no later than March 1, 1973. The Commissioner agreed with the Bureau's contention and, under date of January 2, 1973, sent the following letter to the Commissioner of Public Welfare:

January 2, 1973

Steven A. Minter, Commissioner
Department of Public Welfare
600 Washington Street
Boston, Massachusetts

Dear Commissioner Minter:
Boston, Massachusetts

The Legislative Post Audit and Oversight Committee has brought the matter of the "special 03" Welfare Department payroll to my attention. Use of what was intended to be a temporary measure has been extended far beyond the six month period originally authorized. I agree with the Committee that this special payroll ought to be abolished.

Therefore, I am requesting that you take whatever action is necessary to eliminate the "special 03" payroll as quickly as possible, but in no event later than March 1, 1973. I realize that this decision may create some temporary difficulties for your agency, but this office will assist in making the transition period as easy as possible. The Bureau of Personnel and the Division of Civil Service will also be available to help in processing and expediting the required paper work.

If you have questions regarding this matter, please do not hesitate to contact me.

Sincerely,
WILLIAM I. COWIN
Secretary of Administration

II AUTOMATED FINANCIAL INFORMATION SYSTEM HIDDEN CONSULTANTS

The Comptroller's Division, within the Executive Office for Administration and Finance, maintains files on the various documents pertaining to consultants. They include copies of:

- 1.) AF-C2 Forms;
- 2.) Contracts;
- 3.) Financial Payment Documents (Standard Invoices, Invoice Warrants, Advances, and Returns of Advance);
- 4.) Master Vendor File;

- 5.) Processed Transaction File (Records of each individual financial transaction which has been processed through the new Automated Financial Information System of the Commonwealth).

According to these records, the Commonwealth of Massachusetts hired 16,386 consultants in the 1972 fiscal year. There were 14,417 individual consultants and 1,969 consultant firms. However, these figures are misleading and do not represent the true total of consultants working for the Commonwealth in the 1972 fiscal year. In one agency alone, the Department of Community Affairs, over 400 consultants, including consultants hired by the Governor's Special Planning Commission on Elderly Affairs, do not appear in a report of

the 1972 payments by vendor prepared by the Comptroller's Division for the Legislative Post Audit and Oversight Bureau.

The inability of the Comptroller's Division to include the names and payment amounts for these "hidden consultants" can be traced to the use of two special methods of payment:

- 1.) Invoice Warrant;
- 2.) Return of Advance.

The first of these methods allows an agency to create a single payment transaction (an Invoice Warrant), with itself as the vendor, in lieu of creating many payment transactions (Standard Invoices) for numerous individual vendors. The substantiation for this transaction consists of a typewritten list of individuals, who are to receive payment for services rendered, attached to the Invoice Warrant. As a result of this transaction, the names on this list never find their way into the Automated Financial Information System.

This Invoice Warrant is included in the Comptroller's Total Warrant for payments for the week. There is a notation on the Total Warrant that checks are to be issued for the list of names attached to any Invoice Warrant. These individual checks are then "hand-typed" in the State Treasurer's office.

The net result is that the state agency, by assigning its own vendor code to the Invoice Warrant, becomes a vendor and avoids the necessity of having each of the individual vendors obtain a vendor number for himself. The agency becomes, in effect, a disbursing office for the payment of monies to consultants whose names never appear in the Automated Financial Information System.

By the second of these methods, Return of Advance, a lump sum of money is "advanced" to an agency which deposits the money in its own checking account and writes checks to its vendors. These expenditures are then accounted for by the agency on a "Return of Advance" document sent to the Comptroller's Division. Attached to this document are separate "Invoices" for each individual to whom an expenditure was made. However, the "Return of Advance" is the only document which is processed through the Automated Financial Information System. The vendor identification number used on these documents is a "dummy" which translates on the Master Vendor File as simply "Return of Advance."

Thus, once again, the agency has become the disbursing office for the payment of monies to consultants whose names never appear in the Automated Financial Information System.

The total amount paid to consultants under these two methods during the 1972 fiscal year was 20.6 million dollars. This is in addition to the nearly 60 million dollars which the Department of Public Welfare expended under the "Return of Advance" method in subsidiary "07", which should have also been recorded in subsidiary "03". Thus, we have an 80 million dollar total expenditure for consultant services which cannot be accounted for in detail in the Commonwealth's Automated Financial Information System.

The main reason given for the use of the "Invoice Warrant" and the "Return of Advance" by both the agencies and the Comptroller's Division is one of convenience. Their use means less work.

Thus, the reporting capability of the Automated Financial Information System, a most costly device, is impaired, and the continued use of these procedures renders compliance with the reporting requirements of the U.S. Internal Revenue Service and the Massachusetts Department of Corporations and Taxation difficult, if not impossible.

It is strongly recommended that both of these methods of payment be eliminated, that each individual payment for consultant services be submitted on a "Standard Invoice," and that each person or firm providing these services be required to obtain a vendor identification number. If these recommendations are carried out, then, and only then, will a true picture of consultant payments be available in the Automated Financial Information System. This will provide a much improved base of information for the Comptroller's Division, the Executive Office for Administration and Finance, the U.S. Internal Revenue Service and the Massachusetts Department of Corporations and Taxation, so that better control may be exercised and more accurate reports can be provided and utilized.

III ADVANCEMENT OF FUNDS — DEPARTMENT OF PUBLIC WELFARE

Chapter 541 of the Acts of 1968, entitled "An Act Providing for the Elimination of the Duplication of Welfare Recipient Lists and the Advancing of Funds of the Department of Public Welfare," provided the Department of Public Welfare with an unique situation.

This Act permits the advancement of such funds as the Comptroller shall determine to the Department in anticipation of recipient and vendor payments, provided that a monthly report is submitted to the Comptroller certifying that there are records and vouchers in the custody of the Department to substantiate any and all disbursements. This allows the Welfare Department to

expend funds free from accounting controls, including a preaudit by the Comptroller, which are applicable to all other state agencies. Thus, instead of following the normal procedure, whereby the Comptroller would preaudit the payments for legality, the Department was excused from this requirement and merely had to certify to the Comptroller, on an after the fact basis, that it had expended the money.¹⁾

LACK OF PREAUDIT FUNCTION

Chapter 541 was repealed by Section 13 of Chapter 885 of the Acts of 1969 and, once again, the Department of Public Welfare was subjected to the same laws relating to the expenditure of funds as all other state agencies, including a preaudit by the Comptroller.

This situation was short-lived because Chapter 705 of the Acts of 1970 repealed Section 13 of Chapter 885. Thus, once more, the Department of Public Welfare could request advances and make expenditures without a preaudit by the Comptroller.

The net result is that there is no preaudit function being performed with respect to expenditures by the Department of Public Welfare and, consequently, a most important financial control factor has been lost.

The procedure followed is that each of the 34 Finance Units within the Department prepares a monthly "Summary Expenditure Report" which sets forth the total disbursements for the month by category of assistance for all Service Offices within the Finance Unit. This report is compiled from figures sent to the Finance Unit by each Service Office which retains the original support vouchers.

The "Summary Expenditure Report" is forwarded to the central office of the Department of Public Welfare in Boston. This office, in turn, prepares a Return of Advance and Standard Invoice based on the report.

The Return of Advance and Standard Invoice, together with copies of each Finance Unit's expenditure report, are transmitted to the Comptroller and these constitute the only substantiation for the disbursement of the funds which have been advanced.

IMPROPER EXPENDITURES

The absence of a preaudit function by the comptroller has resulted in another situation which is singular with the Department of Public Welfare.

The Code Manual provides that all expenditures for medical, dental and medical laboratory services of a

personal nature shall be made from the "03" account. It likewise, provides that all expenditures for medical, surgical, and laboratory purposes, other than for personal services, shall be made from the "07" subsidiary account.

The Department of Public Welfare presently charges all expenditures for medical, dental and medical laboratory services of a personal nature under its medical assistance program to the "07" account. By way of explanation, the appropriation for this program for Fiscal Year 1971 was divided between the two subsidiary accounts with \$12,000,000 being appropriated to the "03" account and \$275,786,836 being appropriated to the "07" account.

According to the statistical report of the Department of Public Welfare for Fiscal Year 1971, payments to physicians, dentists, and other licensed medical practitioners amounted to \$47,465,000 which, according to the provisions of the Code Manual, should have been charged to the "03" account. The Department, however, charged only \$12,000,000 to this account and the balance, \$35,465,000, was charged to the "07" account.

The total appropriation for the Medical Assistance Program for Fiscal Year 1972 was appropriated to the "07" account and all expenditures charged to this account including payments to doctors, dentists, and other licensed medical practitioners. The total amount expended for these services, according to departmental records, was \$57,838,000.

In both of the above instances, the charges made against the "07" account were violative of the provisions of the Code Manual and would have been rejected if the Comptroller's office had been performing the preaudit function. This does not mean that the expenditures were illegal. It merely points out that, by making these expenditures from the "07" account instead of from the "03" account where they properly and legally belonged, the Department of Public Welfare effectively concealed the true amount being expended for "03" services. The true "03" expenditures for the Medical Assistance program, based upon Welfare Department report figures, were understated by \$35,465,000 in Fiscal Year 1971 and by \$57,838,000 in Fiscal Year 1972.

It must be noted, however, that these figures of understatement are not reflected in the Comptroller's records and, as long as this practice is allowed to continue, it will be impossible to comply with the requirements of the Internal Revenue Service and the Massachusetts De-

¹⁾Since the enactment of this statute the State Auditor has periodically criticized this practice. He contends that the procedure of keeping all necessary records in the 134 Service Offices of the Department renders a proper accounting impossible.

partment of Corporations and Taxation with respect to the reporting of income of consultants. In addition, it renders unreliable the figures contained in the Massachusetts Financial Report (P.D. 140) issued by the Comptroller for each fiscal year.

IV INTERCHANGE OF FUNDS

The provisions of Section 29 of Chapter 29 of the General Laws permit an increase or decrease in the amounts appropriated to subsidiary accounts by interchange or transfer. This section reads as follows:

Any subsidiary account set up as prescribed in the schedules referred to in section twenty-seven, on the books of any department, office, commission or institution, receiving an appropriation from the commonwealth, may be increased or decreased by interchange with any other such subsidiary account within the same appropriation account, under the following conditions: that a request therefor from such department, office, commission or institution is approved in writing by the budget director, and, in the case of a department, office, commission or institution within any of the executive offices established by chapters six A and seven, such request is also approved by the secretary having charge of such executive office; and that such request is filed by the budget director with the comptroller.

The transfer of funds is also regulated by the provisions of Section 15 of the General Appropriations Act for each fiscal year as follows:

SECTION 15. The budget director, notwithstanding the provisions of section twenty-nine of the General Laws, is hereby directed to limit the transfer of funds between subsidiary accounts, established as provided in section twenty-seven of said chapter twenty-nine, to those transfers required to meet unforeseen emergencies where funds otherwise are not available to protect the public interest. The budget director shall file forthwith, on the approval of any such transfer, a copy of the authorization with the house and senate committees on ways and means.

It should be clearly noted that any such increase or decrease in subsidiary accounts by interchange or transfer is solely and completely an executive function and does not require concurrence by the General Court. The final authority to approve a transfer of funds rests with the Budget Director in the Executive Office for Administration and Finance.

During Fiscal Year 1972, an amount in excess of \$17,000,000 was transferred between the various sub-

sidary accounts with the approval of the Budget Director. This amount included a net transfer into the "03" account in excess of \$8,800,000. An analysis of these transfers revealed that most of the activity centered around the "01" account and the "03" account.

A net total of \$14,904,232 was transferred out of the "01" account to other subsidiary accounts. Of this amount, over \$8,300,000 was transferred to the "03" account.

To summarize, 56% of the amounts transferred out of the "01" account went into the "03" account and, of the net amount transferred into the "03" account, 94% came from the "01" account.

Thus, many permanent state positions are left unfilled because funds for them have been transferred. These permanent positions have been authorized by the General Court, are subject, in most instances, to Civil Service laws and rules, and are funded in the "01" account. This account, of all the subsidiary accounts, is clearly the most definable from a dollars and cents standpoint because, in it, the General Court establishes the number of permanent positions, the position titles, and their compensation.

When excessive amounts of money are transferred out of the "01" account, it means either that newly authorized permanent positions have not been filled, or that previously authorized permanent positions have become vacant and have not been filled. When most of these funds are transferred into the "03" account to pay consultants, it is a clear violation of legislative intent.

DEPARTMENT OF MENTAL HEALTH — ERICH LINDEMANN MENTAL HEALTH CENTER

The General Court, for Fiscal Year 1971, approved 167 permanent positions for the Lindemann Mental Health Center in Boston. This agency, likewise, had \$25,600 available for expenditure in the "03" account and spent that total amount.

For Fiscal Year 1972, the General Court again approved 167 permanent positions for this agency and appropriated \$50,000 to the "03" account.

On July 2, 1971, the second day of the new fiscal year, the Massachusetts Department of Mental Health, hereinafter referred to as the Department for the purposes of this section of the report, on behalf of the Erich Lindemann Mental Health Center, entered into a contract with the Massachusetts General Hospital, hereinafter referred to as the Hospital for purposes of this section of the report, for the establishment of an accredited training program for residents in psychiatry. The contract price was \$130,800.

Section 9 of the signed contract provided that "the Department shall, *subject to appropriation*, provide a maximum sum of one hundred thirty thousand eight hundred dollars (\$130,800) to support the Program, subject to approval of the Commissioner of Administration in accordance with statute. Payments not to exceed the sum of ten thousand nine hundred dollars (\$10,900) a month shall be made to the Comptroller of the Hospital as soon as possible after the last day of each month on vouchers submitted for that month." (Emphasis added).

This was a consultant contract to be compensated out of "03" funds. Particular attention must be paid to the

wording of Section 9 of the contract for the amount to be paid by the Department to the Hospital was "subject to appropriation" by the Legislature. This indicates clearly that the funds had not been appropriated for this program. Investigation reveals that the Department had not even discussed the program with the Legislature.

How, then, were the funds derived to compensate the Massachusetts General Hospital under the terms of the contract? One thing is certain and that is that the Hospital was so compensated.

The chronology of events in this matter is most interesting and reads as follows:

July 1, 1971 — General Appropriations Act for Fiscal 1972 becomes effective and contains no approval or funds for the program set forth in the aforementioned contract.

July 1, 1971 — AF-C2 form forwarded to the Executive Office for Administration and Finance requesting approval to acquire the services of the Massachusetts General Hospital on a consultant basis from July 1, 1971 to June 30, 1972 with a maximum obligation of \$131,000.

July 2, 1971 — Contract between the Department of Mental Health and the Mass. General Hospital executed.¹⁾

July 27, 1971 — Request from the Department of Mental Health to the Budget Director to transfer the sum of \$130,206 from the "01" account to the "03" account. The reasons given for the requested transfer were: "1.) The Erich Lindemann Mental Health Center is establishing an accredited training program for residents in psychiatry in Fiscal Year 1972. (Implementation of this program is concurred in by Mr. Seth Armen, Fiscal Affairs Division, A&P); 2.) Appropriation Bill for Fiscal Year 1971, Chapter 480, Acts of 1970, authorizes the Erich Lindemann Mental Health Center a total of 169 personnel positions effective October 1, 1970. Thirteen (13) of these positions have been frozen in Fiscal Year 1972 and the salaries thereof (totaling \$130,205.40) are available for transfer to subsidiary account "03"; and, 3.) Approved Fiscal Year 1972 budget for the Erich Lindemann Mental Health Center does *not* contain any monies for support of this program in Subsidiary Account "03."

July 28, 1971 — Correspondence from Philip J. Curran, Director of Budget and Cost Control, Department of Mental Health, to then Commissioner of Administration, Charles E. Shepard, as follows:

July 28, 1971

¹⁾No legislative approval or funding for this program.

Mr. Charles E. Shepard, Commissioner
Executive Office for Administration & Finance
State House
Boston, Massachusetts
Attention: Mr. Edwin Hebert, Budget Director

Dear Sir:

We are forwarding herewith AF-C2 form dated July 1, 1971, contract between Massachusetts General Hospital and Erich Lindemann Health Center, in the amount of \$131,000.

Inasmuch as there is insufficient funds in account 5663-0000-03, we have forwarded, under separate cover a transfer request from "01" to "03" to pay for this contract.

Also attached hereto is a list of the positions to be frozen in the "01" to accomplish the transfer amount of \$130,206.00.

Very truly yours,
Philip J. Curran
Director of Budget
and Cost Control

PJC:md Enclosure

ERICH LINDEMANN MENTAL HEALTH CENTER

1 July, 1971

POSITIONS FROZEN TO PROVIDE FUNDS FOR RESIDENCY CONTRACT WITH MGH.

Position Number	Position Designation	Annual Salary	Remarks
0005	Assistant Director of Nurses	\$11,403.60	
0039	½ Chief Psychologist	6,734.00	
0043	Dentist	14,214.20	
0075	Institution Domestic Aide	5,171.40	
0089	Junior Chemist	8,411.00	
0092	Laboratory Technician	6,658.60	
0107	Mental Health Coordinator	1,944.50*	Frozen for 10 weeks
0117	Pharmacist	8,938.80	
0151	Senior Psychiatrist	17,178.20	
0155	Senior Psychiatrist	17,178.20	
0156	Senior Psychiatrist	17,178.20	
0159	Staff Psychologist	8,166.90*	Frozen for 42 weeks
0165	Supervisor of Volunteers	7,027.80	

September 2, 1971 — Request for transfer of funds approved by the Budget Director.

September 20, 1971 — Form AF-C2 approved by the Commissioner of Administration.

The facts are clear. The Department had neither approval nor funding this program. Despite this, it entered into a contractual agreement with the Massachusetts General Hospital to implement it, and committed the Commonwealth to an expenditure in excess of \$130,000. To be sure, the words "subject to appropriation" were

included in the provisions of the contract. However, no such appropriation was ever made by the Legislature. The Department arbitrarily froze thirteen positions whose funding had been approved for the Erich Lindemann Mental Health Center by the Legislature based upon the Department's recommendations to it. The

*Salary for the period of time position is frozen.

purpose in freezing these positions was solely to make the amount of money, agreed to in the contract, available for transfer. The questions might well be asked, "What would have been the Commonwealth's liability in this matter if Form AF-C2 and the request for transfer had been disallowed?"; and, "What would have been the liability, either civil or criminal, of the signatories to the contract on the part of the Department of Mental Health in a similar situation?" To be sure, these questions have been rendered moot by the action of the Executive Office for Administration and Finance in approving both Form AF-C2 and the transfer request.

Again, the evidence speaks for itself. The Executive Office for Administration and Finance considers their right absolute to use appropriations as they see fit regardless of legislative intent in making such appropriations.

V CASE HISTORY OF NUMEROUS VIOLATIONS DR. SAMUEL W. DOOLEY — YOUTH SERVICES

Commissioner Jerome G. Miller of the Department of Youth Services negotiated with Samuel W. Dooley, M.D., of California, relative to the latter accepting the position as Director of Medical Care and Planning for the Department. As a result, Dr. Dooley agreed to assume this position effective July 1, 1971, at an annual salary of \$24,840.40. In addition, Dr. Dooley claims that Commissioner Miller guaranteed him that he would retain this position until he reached the retirement age of 65 years.

It should be pointed out that, at this point in time, no such position existed, nor had approval of such position ever been requested of the Senate or House Ways and Means Committees.

Despite these facts, Dr. Dooley commenced work with the Department on July 1, 1971, on a consultant basis, without a contract. Form AF-C2 requesting authorization to employ him as a consultant from July 1, 1971 to December 31, 1971, was approved by the Commissioner of Administration on August 3, 1971, at least one month after he had commenced working for the Department.

In November, 1971, the Bureau of Personnel and Standardization requested the Joint Ways and Means Committee of the General Court to establish a new classification, Director of Medical Care and Planning, Department of Youth Services (Job Group 29). This request was approved.

In December, 1971, the Department of Youth Services requested the Bureau of Personnel to establish, on an excess quota basis, the position of Director of Medical

Care and Planning, Department of Youth Services, in Job Group No. 29. The Department, at the same time, also requested permission from the Bureau of Personnel to recruit Dr. Dooley at the top grade of this job group. The Bureau of Personnel refused this latter request and the Department did not pursue the request for an excess quota position any further.

On January 1, 1972, when the approval of his services as a consultant had expired, Dr. Dooley had no employment status whatsoever with the Department. In spite of this, consultants, who control the administration affairs of the Department of Youth Services and supervise and direct career state employees, decreed that he should continue his work and be compensated therefor, and Commissioner Miller concurred. Consequently, on January 11, 1972, Dr. Dooley was placed on a "draw" account whereby he would be advanced \$300 per week through the Treasurer's office. He was not a state employee, he was not a consultant hired by the Department of Youth Services, and he was not entitled to any payments from the Commonwealth; yet, he was "drawing" \$300 per week.

This draw was established by order of David Gorfinkle, Assistant Director of Administration, a consultant, with the approval of Gardner Jackson, Director of Administration, another consultant. Mr. Gorfinkle directed Mary Marmorale, a state employee with a classification of Senior Accountant, to make out a so-called "draw" for Dr. Dooley for \$300 per week. A copy of this "draw" follows:

This "Draw" certified that "the monthly salary of the employee (Dr. Dooley) was \$1,910.80, that the listed amounts are proper charges to Account No. 1700-0010 (Youth Services-Administration)." This "draw" was signed by Mary Marmorale as "responsible approving authority" under penalties of perjury.

Dr. Dooley did not have any standing as a state employee or as a consultant. He did not have a "monthly salary" and the amounts listed in the "draw" were not

proper charges to Account No. 1700-0010 (Youth Services-Administration). At this point in time, Dr. Dooley was receiving compensation from the Commonwealth without right and as the result of a perjurious certification to the State Treasurer by the Department of Youth Services.

In a letter dated March 15, 1972, Commissioner Miller wrote to Dr. Dooley as follows:

March 15, 1972
Samuel Dooley, M.D.
Medical Director
Department of Youth Services
14 Somerset Street
Boston, Massachusetts 02108

Dear Dr. Dooley:

I sincerely regret to inform you of my difficult decision to terminate your services as Director of Medical Care for the Department, effective Friday, April 28, 1972. After careful review and consideration of your professional and administrative performance to-date as Medical Director over this past year, I can find little basis for confidence in your ability to plan, direct and provide medical leadership in the administration of the entire medical care program of the Department, particularly as we move into the complex phase of regionalized administration of services. If I personally can be of any assistance in your efforts to obtain employment elsewhere, please let me know.

Very truly yours,
Jerome G. Miller, D.S.W.

cc: Gardner Jackson, Jr.
Joseph Correia
Arnold Schuchter

On April 2, 1972, Dr. Dooley replied as follows:

April 2, 1972

Dr. Jerome Miller, Commissioner
Department of Youth Services
Commonwealth of Massachusetts
73 Tremont Street
Boston, Massachusetts 02108

Dear Dr. Miller:

In response to yours of the 15 March, 1972, please be informed that under Chapter 30, section 1 through 8, Massachusetts General Laws, any attempts to abrogate our agreement for my appointment are invalid if not in accordance with law. Therefore, I am not at liberty to abide your attempts to terminate my services, since such attempt is arbitrary and without procedure calculated to determine whether legitimate grounds exist. (Sec. 303 F. Supp. 112; 384, U.S. 1001, 300 Mass. 232).

Please also be informed that my intentions are to remain in service until such time as a legal determination has been made of the facts and circumstances concerning your intent to terminate my services.

In good faith, I trusted and relied upon your representations of 28 January 1971 that you had authority and power to appoint me as Director of Medical Services, Youth Services Department, Commonwealth of Massachusetts. The express conditions of my appointment (see attached) was for a specified term of years — namely, until I reached the retirement age of 65. Additionally, the conditions of my appointment specified expressly that I am to receive Grade 33 remuneration from July 1, 1971 until the end of my retirement.

In relying to my detriment upon your representations of authority and power to make such appointment, I have given up my former job as clinical professor, step 4, of Maternal and Child Health, University of California Berkeley.¹¹

My former job included retirement, insurance and other fringe benefits to which the University contributed amounts approximately 11% of salary. These benefits I also gave up to my detriment in reliance upon your representations. I moved my family and entire belongings from the west coast to the Boston area at great expense and inconvenience.

As a result of this detrimental reliance, I hereby request the immediate commencement of administrative proceedings to determine the legal basis for your failure to (a) execute the necessary documents providing me with Grade 33 retirement benefits as promised, and (b) to execute documents necessary to reimburse me for authorized Youth Services transportation expenditures.

At present, I am being charged interest and late charges for past due transportation expenses authorized by the planning and finance directors; it is to be noted that two leased vehicles have been used almost exclusively by others for purposes other than health services.

Pursuant to our express agreement of 28 January 1971, it is your responsibility to guaranty forthwith payment to me of Grade 33 remuneration from 1 July 1971 to date and in the future. Any lesser sum alleged to be due should be explained in writing accompanied by proper legal authorization from appropriate authorities.

In order to correlate implemented programs with expenditures it is necessary that I be furnished forthwith an up-to-date accounting of the budgetary allocation for health services for the Department including itemized expenditures from 1 July 1971.

Your representations as to my planning, directing, and leadership abilities would seem to be without basis in fact or law. I have been given responsibilities, regarding health care services but you have never granted me official authority to carry out such responsibilities, despite requests therefor.

It would seem that your administrative policies show little commitment to a comprehensive health care program. In support of this contention is the following:

(a) As Director of Health Services, I have requested, but never been provided a secretary nor a typewriter;

(b) I have requested, but never been provided, adequate transportation to carry out my state-wide duties which include visits to the various facilities and individuals.

(c) I have requested, but not received, regular notification of important staff meetings and conferences. Such notification is necessary since there is no established policy of staff meetings.

(d) Before the move to 73 Tremont Street, Boston, Mass., I requested to be provided an office therein so as to be in close proximity with operational planning. This request has not been granted. However, upon commencement of my duties I was given inadequate working space having to share a small room with four other persons. Belatedly, similar space was offered at 73 Tremont Street. Many of my duties legally require confidentiality, which is not possible in a small office shared with others.

(e) In August 1971 I requested that Eleanor Reynolds, R.N., be appointed nursing supervisor of the Department of Youth Services. To date this appointment has not been made.

(f) The recommendations made by Dr. Arthur Salisbury, after in-depth study, have been widely departed from the Department of Youth Services personnel other than the Medical Director.

(g) Anyone charged with responsibilities of Medical Director of the Department of Youth Services must have the following:

¹¹There are 5 professor step categories. Within 7 years I was promoted from step 2 to step 4. Having not received my promised remuneration from Dept. of Youth Services I have incurred a reduction in salary of approximately \$500.00 annually.

1. An express designation of authority necessary to carry out the designated responsibilities;
2. Inclusion in meetings affecting the Health Director's areas of responsibility and authority;
3. Immediate notification of policy and program decisions.
4. Appointment of a qualified Registered Nurse to supervise and coordinate nursing aspects of the Department of Youth Services.
5. Provision of private office space and adequate office equipment. Such office should be located at 73 Tremont Street;
6. Full time secretary to assist the Director and Registered Nurse;
7. Transportation.

My commitment and my expectations based on our January 28, 1971 agreement include the following:

(a) I am primarily concerned with the structural formalization and implementation of a high quality health care program for the children of Massachusetts under the jurisdiction of the Department of Youth Services;

(b) Such program should be based on the guidelines outlined in the Salisbury Report. In order to implement such a program it is necessary that the Medical Director be part of the planning for, and regularly informed of, the number of children assigned to given placement facilities. It is also necessary that the Director be informed at all times which group homes are to be opened, when they will be in operation, and how many children are assigned to each group home facility;

(c) It is important that the Medical Director be informed at all times of the assignment of children to schools and foster homes;

(d) The funds allocated and to be used for youth health services should be under the control of the Medical Director.

I would like to meet with you at your earliest convenience to discuss the substance of this letter.

Sincerely yours,
S/ Dr. Samuel W. Dooley
Medical Director
Department of Youth Services
Commonwealth of Massachusetts

cc/ Massachusetts
Committee For Children and Youth

Commissioner Miller, on April 10, 1972, referred this letter to the Assistant Director of Administration for Personnel Management for his comments and, on the same date, received this memorandum in return: "Your letter of March 15th is valid and I recommend no other action be taken until April 28, 1972, after which date Dr. Dooley insists in continuing to report we should take action to remove him either voluntarily or involuntarily. I have taken the necessary steps to stop payment as of your date in terminating Dr. Dooley."

The doctor continued to report for work and continued to draw \$300 per week.

On June 20, 1972, three months after Dr. Dooley had received notification of the termination of his services, a request (AF-C2) was submitted to the Commissioner of Administration by Commissioner Miller to employ Dr. Dooley again as a consultant. This AF-C2

was approved on July 10, 1972 and covered the period July 1, 1971 to June 30, 1972, and superseded the previous AF-C2 for Dr. Dooley which was signed August 3, 1971 and only covered the period of July 1, 1971 to December 31, 1971.

The later AF-C2 included in its provisions retroactive payment for the period January 2, 1972 to June 30, 1972. This was in violation of Administrative Bulletin 71-18 which precluded retroactive payments. Following the approval of this AF-C2, Dr. Dooley received a lump sum retroactive payment of \$11,942.50. On August 3, 1972, Dr. Dooley paid into the State Treasury \$8,400, the total amount he had received as a "draw" of \$300 per week for the period January 2, 1972 to June 30, 1972.

On and after July 1, 1972 when he again had no employment status with the Commonwealth, Dr. Dooley

continued to report for work and continued to draw \$300 per week and, once more, on August 28, 1972 the Department sent a perjurious certification to the State Treasurer to assure that Dr. Dooley would have his weekly advance of \$300.

On August 30, 1972, the Department of Youth Services requested that Dr. Dooley again be employed as a consultant for the period July 1, 1972 to June 30, 1973, providing the same services he had rendered before. This request was approved on December 1, 1972 retroactive to July 1, 1972, again in violation of Administrative Bulletin 71-18, although the Commissioner of Administration purports to waive the provisions of this bulletin.

VI REORGANIZATION AND THE MODERNIZATION SYSTEM UNIT (MSU)

As a necessary prerequisite to the proper implementation of the reorganization of state government, the office of the Commissioner of Administration received two appropriations amounting to \$1.2 million "for the purpose of designing and implementing management procedures and systems to effect improvements in the administrative organization and operations of the state agencies."¹⁾ The Modernization Systems Unit (MSU) was established to carry out this effort.

The staff consisted of thirty-nine independent consultants and the consultant firm of Mitre Corporation whose function was to lend their expertise in assisting the expert consultants.

The \$1.2 million was spent for three basic projects, namely:

- 1) Program Management Systems
- 2) Information Systems
- 3) Human Services

1) The Program Management System project essentially was an effort to develop a workable model for the use of program budgeting in all state agencies. A model was developed and pilot-tested in some agencies. After a two-year period approximately thirty programs were completed out of five hundred that exist in the state. The cost of these programs was in excess of \$400,000, or over \$13,000 for each program.

2) The Information Systems Project was an attempt to characterize the existing information system that supports the delivery of client services by agencies within the Secretariat of Human Services and to provide a basis for improving the client service delivery information system through analyses and recommendations for change.

3) The Human Services Project focused on the development of a means of linking up the vast assortment of separate services of the many agencies within the Secretariat of Human Services, in order that people with several kinds of problems could receive full-range assistance from all involved agencies. A model was developed, cost figures generated, and it was the intention that the implementation of this system was the responsibility of the incoming Secretary of Human Services.

When the Modernization Systems Unit was phased out, approximately fifty percent of that staff was hired by the newly created Secretariats and their respective agencies, with the intention of educating agency personnel and implementing these three projects.

None of the three projects was implemented and most of the data generated were shipped to a warehouse where inactive state records are stored.

From the MSU effort, only one thing is conclusive . . . the Commonwealth invested \$1.2 million and two years time and, as of this date, has nothing positive to show for that investment.

¹⁾Ch. 452, Acts 1969 \$600,000 (Appn. Acct. 0451-1131) Ch. 480, Acts 1970 \$600,000 (Appn. Acct. 0451-1131)

FRINGE BENEFITS FOR CONSULTANTS

GROUP INSURANCE

Chapter 628 of the Acts of 1955 established a contributory group general or banket insurance program for persons in the service of the Commonwealth (commonly known as the State Employees Group Insurance System), and provided for a system of group insurance coverage for such persons. The statute further created the Group Insurance Commission; empowered it to adopt rules and regulations for the administration of the system; and vested in it final and binding determination as to eligibility for participation.

In furtherance of this authority, the Group Insurance Commission established rules and regulations, including the following:

EXTRACT FROM RULES AND REGULATIONS

CODE NO.

100:425

(Amended 1/1/69)

Persons paid from the "03" Services, non-employees' Account", are generally *NOT* eligible for coverage under the various life and health insurance programs. (Exception, see Code 100:426). Eligibility for such persons is determined only by the Commission — not the appointing authority. Upon request for such a determination, the Commission will send certification forms to be completed by the appointing authority. All such determinations are accomplished by vote of the Commission.

100:426

Where the employment of a person paid from the "03 Services, Non-Employees' Account" appears to meet the following criteria, all related facts shall be submitted to the Commission for a determination of eligibility as an exception to Code No. 100:425, and such determination shall be final.

- (a) At the time of hiring or appointment, it is determined by the appointing authority that the employment shall be for at least one uninterrupted year;
- (b) The employment is for the

"regular work week". (See Code No. 100:220);

- (c) The employment cannot be construed to be either "emergency" or "seasonal". (See Code No. 100:206 and 100:221);
- (d) The employment is under the supervision of the appointing authority who has the power to control the method, scope and extent of the duties to be performed; and
- (e) The person is not an independent contractor (consultant). Where premiums have been paid to the Commission on behalf of a person whose services are sustained from the aforementioned account and the Commission has failed to vote approval of eligibility, the person cannot be insured and all monies thus held in escrow by the Commission shall be returned to the applicant.

These regulations indicate the Group Insurance Commission deems it within its authority to admit persons paid out of the "03" account (consultants) to membership in the Group Insurance System. It is interesting to note in this regard, however, that the Budget Director of the Commonwealth, Mr. Edwin T. Hebert, who serves as a member of the Group Commission, has consistently voted against allowing such consultants to participate in this system.

The Group Insurance Commission disregarded the fact that there was in existence such a document as the Code Manual, and that the language contained therein clearly evidenced the Legislature's intent that all persons, whose services were compensated for out of the "03" account, were *NON-EMPLOYEES* of the Commonwealth. It should be noted that the Code Manual has been in existence since 1948 while the group insurance statute was not enacted until 1955.

The Commission ignored the fact that rules and regulations have been promulgated by the Commissioner of

Administration, in compliance with statutory mandate, which define any person compensated out of the "03" account, regardless of the nature and source of such funds, as a consultant and, further, as a non-employee of the Commonwealth.

The Commission has amply indicated its disregard of the Code Manual and the rules and regulations issued by

the Commissioner of Administration, not only in its regulation entitled "Code No. 100:426", but also in the manner in which it requests information upon which to base its determination of a consultant's eligibility for admission. A copy of the form issued by the Group Insurance Commission, entitled "03" Services Account Certification" states:

GROUP INSURANCE COMMISSION

89 Causeway St., Boston, Mass. 02114

03 SERVICES ACCOUNT CERTIFICATION

(Date)

(Name of Department or Institution)

(Address)

1. Reference is made to Code Nos. 100:425 and 100:426 of the Rules and Regulations issued by the Group Insurance Commission (See Reverse).

2. The following employee is compensated from the "03 SERVICES, NON-EMPLOYEE'S ACCOUNT":

(Name)

(Street & No.)

(City/Town)

(Zip Code)

Total time in State Service as of date of this Certification

Date of Birth Age Previous Certificate No. if any

Date current "03 Account" status commenced

Date of appointment or hire

Name of Appointing Authority

Type of Description of Duties

3. It is requested that the above named employee be declared an "eligible employee" as defined under Ch. 32A, G.L., as amended, and under the Rules & Regulations (Codes) issued by the Commission.

4. I HEREBY CERTIFY, UNDER THE PENALTIES OF PERJURY, THAT:

a. Above named person is *NOT* an independent contractor (consultant) as defined in Black's Law Dictionary, 4th Edition;

b. Period of employment at time of hire or appointment was determined by the Appointing Authority to be for at least one uninterrupted year of service, and said employee works a regular work week as defined in Code No. 100:220, and is *NOT* classified as either "emergency" or "seasonal"; and.

c. Employee is under the supervision and instruction of the Appointing Authority;

d. Employee will continue to be compensated from the "03 Account" until; and the terms of the employment agreement (either written or parol) will include consideration for this insurance coverage provided that approval is granted as requested in Paragraph 3 above.

5. a. ☐ It is hereby certified that federal or other non-state funds are supporting the salary or compensation of the above named employee, and that such funds will be used to reimburse the Commission for the "Commonwealth's share" of the premium and proportionate administrative costs.

b. ☐ It is certified that no federal or other non-state funds are supporting the salary or compensation of the above named employee.

Reporting Location Code No. Signature

(Dept. Head or App't. Auth.)

(Original to Commission)

(Form 03 1-5-71)

The Group Insurance Commission's action, in awarding state employee insurance benefits at state employee group premium rates to consultants, belies the fact that,

while the Commission was given the authority to make rules and regulations governing the operation of the group insurance program, such rules and regulations

must be consistent with law. It is obvious that the regulations entitled "Code No. 100:426 which opened the door for the inclusion of "03" payees (consultants) in the group insurance program, and the subsequent issuance of its Form 03, are inconsistent with the provisions of the Code Manual and the Rules and Regulations Governing the Use of Consultants.

The Group Insurance Commission also failed to take into account the fact that the rates of compensation paid to "03" consultants for their specialized services are, in many instances, substantially in excess of the wage rates paid to state employees performing comparable services. Consequently, there are no provisions contained in consultant contracts providing for state employee group insurance coverage for such non-employees.

An examination of the records of the Group Insurance Commission reveals that, as of November, 1972, there were 455 consultants participating in the state employees group insurance program. The Commonwealth's share of the premium costs for these consultants amounts to approximately \$154,474.68 for Fiscal Year 1973. Of this amount \$101,842.68 was payable from state funds, and the balance of \$52,632.00 from federal or non-state funds. The Commissioner's approval of these consultants for participation in the state employees system, in effect, amounts to the award of an annual subsidy by the Commonwealth to each of them compensated out of state "03" funds of about \$520 for family coverage or \$232 for individual coverage, all of which is in addition to their compensation as consultants.

GROUP INSURANCE PAYMENTS FROM FEDERAL GRANTS AND OTHER NON-STATE FUNDS

BILLINGS DUE FROM FEDERAL GRANTS AND OTHER NON-STATE FUNDS

An examination by the Legislative Post Audit and Oversight Bureau of the Group Insurance reports submitted by certain state agencies during the 1972 Fiscal Year, and their preaudit payrolls, disclosed the fact that individuals paid in whole or in part from federal grants and/or other non-state funds were improperly included with 100% state-funded employees for group insurance premium deduction purposes. As a result, the Commonwealth of Massachusetts was paying additional thousands of dollars in the form of premium payments for group insurance coverage for these consultants.

This fact was brought to the attention of the Group Insurance Commission and, consequently, amended billings were issued by the Commission to the state

agencies examined in order to recover the employer's share of group insurance premiums payable from these federal grants and/or other non-state funds. Unfortunately, this was not possible in all cases because the federal grants had either expired or were totally expended.

These amended billings amounted to approximately \$129,00 and this sum was recovered from the agencies which the bureau was able to examine. There are individuals in other state agencies, which operate with federal funds or other non-state funds, who have also been admitted to the state employees group insurance system. The Group Insurance Commission has notified all such agencies that, henceforth, the employer's share of group insurance premiums must come from the federal funds or other non-state funds.

It is estimated that, as a result of the disclosures made to the Group Insurance Commission by the Legislative Post Audit and Oversight Bureau and the activity of the Commission in zealously pursuing these federal and non-state funds, the billings for Fiscal Year 1973 will approximate \$300,000.

In order to prevent any future losses to the Commonwealth from this source, the Legislative Post Audit and Oversight Bureau, after consultation with the Group Insurance Commission, submitted to the Chairman of the Senate Ways and Means Committee a proposed amendment to the General Appropriations Bill for Fiscal Year 1973 as follows:

SECTION 22A. In order that the group insurance commission may provide for maximum reimbursements to the Commonwealth for group insurance costs, every department, board or agency on or before August first, nineteen hundred and seventy-two shall file with the group insurance commission a true copy of all existing contracts or agreements of every nature and description with the Commonwealth which provides for the receipt or expenditure on behalf of the Commonwealth or a political subdivision of federal, trust and any other non-state funds.

For contracts or agreements entered into on or after July first, nineteen hundred and seventy-two, true copies shall be filed with the group insurance commission no later than sixty calendar days from the effective date thereof.

This amendment was adopted by the Senate and the House of Representatives and became part of Chapter 515 of the Acts of 1972, which was the General Appropriations Act for Fiscal Year 1973.

LOSSES INCURRED BY THE COMMONWEALTH DUE TO INCORRECT COMPUTATION OF EMPLOYER'S SHARE OF STATE EMPLOYEES' GROUP INSURANCE BY DEPARTMENT OF PUBLIC HEALTH.

An examination of the proposed payments for Fiscal Year 1972 to be made to the Group Insurance Commission by the Department of Public Health for the employer's share of group insurance premiums for individuals compensated from federal grants disclosed an underpayment amounting to \$55,211.64. This deficiency was brought to the attention of the administrative office of the Department for appropriate action. New invoices were subsequently prepared by the Department for this Fiscal Year 1972 payment and unencumbered balances amounting to \$37,426.00 in the respective federal grant accounts administered by it were applied to reduce this underpayment. This resulted in a net deficiency or loss of \$17,784 to the Commonwealth.

This loss, and all those incurred subsequent to November 1, 1968, are attributable to the fact that the Department's fiscal office failed to take cognizance of the intent of Chapter 758 of the Acts of 1968 which increased the employer's share of the state employees' group insurance premium cost from 50% to 75% and concurrently reduced the employee's share of the premium cost from 50% to 25%, effective on November 1, 1968. The Department, instead of increasing the employer's share of the group insurance premium to 75%, reduced it to 25%. This error was not detected by the Comptroller's Bureau or the Group Insurance Commission for the fiscal years 1969, 1970 and 1971.

The total loss to the Commonwealth from the failure of the Department of Public Health to reserve adequate funds for group insurance payments from federal grants amounted to \$128,177.28 during this 44 month period. Below is a summary of these losses by fiscal periods.

PERIOD	LOSS
November 1, 1968 to June 30, 1969	\$ 29,008.34
July 1, 1969 to June 30, 1970	35,420.80
July 1, 1970 to June 30, 1971	45,963.40
July 1, 1971 to June 30, 1972	17,784.74
	\$128,177.28

RETIREMENT BENEFITS

The State Board of Retirement established by Section 18 of Chapter 10, administers the state employees' retirement system which was established under the provisions of Chapter 32 of the General Laws.

Since 1953, it has been the practice of the Board to declare certain consultants (non-employees) eligible for membership in the state employees' retirement system. The Board's determination resulted after it received an "Informal Memo" from a then Assistant Attorney General that, under certain circumstances, consultants were so eligible.

The Board has made the further judgment that this authority is contained in Section 3, subsection 2 (d) of Chapter 32. So much of this section as relates to the state employees' retirement system follows:

(d) In all cases involving part-time provisional temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit, including such employment or service of any state official, the board shall have and exercise full jurisdiction to determine such employees' eligibility for membership; provided that any person holding a position for which the annual compensation is fixed in an amount of two hundred dollars or less shall not be eligible for membership except by vote of the board; . . .

The language in this section, obviously, refers to employees and to no one else.

The term "employee" is defined for the purposes of the state retirement system, in Section I of Chapter 32.

"Employee", as applied to persons whose regular compensation is paid by the Commonwealth or the Metropolitan District Commission, as the case may be, shall mean any person, whether employed or appointed for a stated term or otherwise, who is engaged in duties which require that his time be devoted to the service of either such governmental unit in each year during the ordinary working hours of regular and permanent employees, and *who is regularly and permanently employed* in such service, including employees of the general court, state officials, constitutional officers, members of the general courts or other persons elected by popular vote, but excluding members of the judiciary." (Emphasis added).

This clearly indicates that, as far as the state employee's retirement system is concerned, eligibility applies only to employees, as defined in the statute, and not to consultants, who are defined by both the Code Manual and the Rules Governing the Employment and Compensation of Consultants as NON-EMPLOYEES.

An examination of the State Board of Retirement membership records as of February 29, 1972, however,

indicated that a total of sixty-six consultants, excluding those from the Department of Public Welfare and those people in the service of the Commonwealth who are compensated out of federal funds, were enrolled as members of the State Employees' Retirement System. Thirty-seven of these are clergymen performing chaplain service at state institutions, and the remaining twenty-nine are involved in other professional services.

The Board's action in admitting consultants to the state retirement system has no basis in law and imposes an unnecessary financial burden upon the resources of the Commonwealth. The state's share of the average contributory retirement pension paid for the month of February, 1972, according to the Executive Secretary of the Board, amounted to \$213.18. On an annual basis the Commonwealth's share of pension costs for each such pensioner would amount to \$2,558.16. The annual

share of the retirement costs payable by the Commonwealth upon retirement of these sixty-six consultants would amount to approximately \$168,838.56 based on present costs.

This figure would increase appreciably with the addition of certain consultants in the Department of Public Welfare, whose names appear on the special "03" payroll, and those individuals who are classified as Federal "02's".

An effort to obtain a monthly listing of the consultants enrolled in the state retirement system from the Board's accounting office failed as none was maintained by that office. The list of "consultants" established as of February 29, 1972 was compiled by a member of the staff of the Legislative Post Audit and Oversight Bureau from the Board's cash book, copies of state agency payrolls and the Board's general file records.

CHANGING PERSONNEL PATTERN

In recent years, there has been an ever increasing flow of federal funds into agencies within the Executive Department of the Commonwealth. This money is being expended free of legislative controls and of statutory personnel requirements. As a result, a dual personnel system exists which threatens to destroy the morale of career employees.

On the one hand there are the career employees of the Commonwealth who have obtained their job status as the result of open, competitive civil service examinations; on the other hand, there are those individuals in the service of the Commonwealth who are compensated totally from federal and other non-state funds and who have acquired their job status by an entirely different method. These latter are not employees of the Commonwealth under any statutory definition of that term. There are no qualifications or experience requirements for the positions they hold other than those established by the Governor and these, if any, are not defined. The Executive Department has utilized this unrestricted money to create full-time administrative and supervisory positions which have been filled by non-employee consultants. These consultants, contrary to good personnel practice, if not the law, have been placed in positions in which they supervise and direct the work of career men and women and, in some cases, have been permitted to employ and discharge personnel.

As questions have been raised as to the right of these non-employees to enter the contributory retirement system or to enjoy the benefits of the state-supported group insurance program, there has been a growing movement by the Executive Department to reclassify some of the "03 Non-Employees" (consultants) as "Federal 02 employees," an unauthorized classification. This is accomplished solely by the Bureau of Personnel within the Executive Office for Administration and Finance. All that is entailed is a request by an agency for the establishment of various position titles, which are classified as "Federal 02 positions," and approval by the Director of Personnel and Standardization. No action by the Legislature is required and the first knowledge that the General Court has, with respect to the establishment of these positions, consists of a mimeographed notice sent to the Senate and House Ways and Means Committees advising them of the action taken by the Bureau of Personnel. Since no state agency presently

differentiates between individuals paid out of federal funds and those paid out of appropriated state funds, the names of the individuals filling these "Federal 02 positions" are added to the regular payroll of the agency involved. As a result, these non-employees of the Commonwealth are intermingled with legitimate state employees who fill statutorily authorized temporary positions and are compensated out of the "02" subsidiary account, and they find their way, automatically, into the state employees' retirement system.

As of November 27, 1972 the Personnel Division admitted to having placed 4360 individuals in the classification entitled "Federal 02 Positions."

In evaluating this changing personnel pattern of the state government, it should be borne in mind that the consultants being placed into administrative positions are not required to meet any specific written qualifications. The Chief Executive is free to fill the jobs with individuals who meet whatever qualifications, if any, he might personally establish.

There is a substantial number of consultants who are being given benefits which should be restricted to employees. As of November 1, 1972, 455 consultants were members of the group insurance program and 66, exclusive of the Welfare Department and those occupying Federal "02" positions, had joined the State Employees' Contributory Retirement System. Three quarters of the cost of group insurance coverage is paid for by the Commonwealth and, likewise, the indeterminate cost of retirement coverage, which is far in excess of the 5 percent withheld from an individual's compensation. This subject of group insurance coverage and retirement benefits is discussed in another section of this report.

Another example of the manner in which consultants are taking on the appearance of state employees is found in an examination of the operation of a federally sponsored program known as the Intergovernmental Personnel Act. This is basically an exchange program whereby certain state employees, selected by their agency heads, work for a given period of time with a federal agency and, conversely, certain federal employees work for state agencies for a like period of time. The purpose of this program is to broaden the knowledge of these employees in their particular fields of endeavor. Accordingly, the Bureau of Personnel issued a regulation that only permanent state employees would be considered for partici-

pation in this program. The logic of this is not open to question. Why send an individual to participate in this program who has no permanent employee status with the Commonwealth to which he can return with his increased knowledge?

One state agency felt differently and requested approval to send a consultant to a federal agency under this act. The Bureau of Personnel, in violation of its own regulation, gave its approval. The consultant terminated his contract with the Commonwealth and, thus, had no state position to return to wherein he might apply the information and knowledge gained during his service with the federal agency.

To summarize the dilemma that career state employees find themselves in, viz a vis, consultants:

- 1.) Consultants are being used to fill top administrative positions and civil service employees are being precluded from an opportunity to compete for such positions.
- 2.) Consultants are supervising and directing the work of civil service employees.
- 3.) Consultants, in many instances, are receiving the same fringe benefits, e.g., group insurance coverage and retirement benefits, as career state employees which are in addition to the compensation derived from their employment contracts.
- 4.) At least one consultant is participating in the Intergovernmental Personnel Act which, in the judgment of the Bureau of Personnel, is designed for permanent state employees.

By way of example, we cite the following:

CONSULTANTS FILLING FULL-TIME ADMINISTRATIVE AND SUPERVISORY POSITIONS

The hiring of consultants to perform full-time administrative and supervisory positions in state agencies is one of the major contributors to the burgeoning costs of the "03" subsidiary account in the past five years. Prior to that time, expenditures out of the "03" subsidiary account were generally restricted to payments for specialized services, such as medical, legal, engineering, and architectural consultants.

In the normal procedure under the state civil service system, these administrative positions would be filled after a written, competitive examination, requested by the agency and conducted by the Division of Civil Service, and certification that individuals possessed the required experience to meet the qualifications prescribed for these positions.

The device used by the Executive Department, however, of hiring consultants to fill these positions, is a drastic departure from this system. It not only circumvents the purpose of the civil service system and the laws pertaining to veteran's preference, but enables the Executive to fill these positions with anyone he chooses, since there are no specific requirements established for consultants, i.e., no qualifications, experience or examination. It also permits a range of compensation in excess of state salaries for similar employment. The State Auditor, in a report on the Comptroller's Division for Fiscal Year 1971, was highly critical of this practice. The pertinent section of that report is as follows:

"EXPENDITURES FOR SERVICES — NON-EMPLOYEES — STATE FUNDS:

"The total expenditures of the Commonwealth for the services of non-employees during 1971 were \$106,010,032.65, as compared with the total expenditures in the account for the 1970 fiscal year of \$67,949,433.56, a net increase of \$38,060,599.10. An examination of the comparative expenditures for the past two fiscal years, by funds, as shown in Schedule No. XII appended to this report, indicates that the expenditures for Services — Non-Employees have increased in the General Fund by \$23,339,276.39. This represents an increase of 73.5% over the 1970 fiscal year expenditures — non-employees in the General Fund. Schedule No. XII also indicates large increases in the following accounts:

State Bond Funds	\$7,931,869.83
Federal Grants	5,336,401.62
Highway Fund	1,481,395.82

"The various consultant services in which the increases are representative follow:

Architects and Engineers	\$8,679,613.75
Instructors and Lecturers	1,708,892.57
Legal Services, Including Judges	123,433.45
Medical, Dental, Veterinarian & Laboratory Services	13,432,086.84
Religious Services	2,430.73
Other Professionals	10,433,896.36
Janitors, Cleaners & Exterminators	182,786.27
Students, Patients & Institutional Residents	1,028,643.46
Court Reporters and Secretarial Services	98,270.88
Other Nonprofessionals	1,809,765.94
Cash Advances Unaccounted For	541,416.14
Reserve for Liabilities	7,743.19
Cash Refunds Prior Year Advance	11,619.52
	\$38,060,599.10

"Under ordinary circumstances consultants' services should be limited to the performance of unusual or highly specialized work. Such services should not be on a continuing basis, nor should individuals be engaged to fill positions which are classified by the Division of Personnel or which are under the normal control of the Division of Civil Service. In the opinion of the Department of the State Auditor there are many instances where consultants' services are being contracted for to apparently fill positions to avoid compliance with Civil Service statutes and regulations, to evade veterans' preference requirements or to pay for salaries in excess of those permitted under existing statutory schedules."

The Department of Youth Services, for example, received subgrants totaling \$188,000 from the Governor's Public Safety Committee for a project entitled "Administrative and Management Services." These funds are authorized by Section 303, Omnibus Crime Control and Safe Streets Act of 1968 (PL. 90-351).

With these funds, the Department, unilaterally, created the positions of Director of Administrative Services and Assistant Director of Administration for Fiscal Management and Assistant Director of Administration for Personnel Management. These positions were filled by consultants who became administrative supervisors over all civil service employees, thereby creating a new superstructure in the administration of the department.

The consultants selected for these positions had little, if any experience in the operations of large state agencies and had no prior experience in the Department of Youth Services or fields directly related thereto.

At the time of his appointment as Director of Administration at a salary of \$20,000.00 per year, this consultant was in the employ of the Governor's Public Safety Committee which awarded the grant of funds to the Department of Youth Services from which this consultant was and is compensated. It is difficult, if not impossible, to determine whether a "quid pro quo" situation existed in this instance.

Despite the fact that this consultant's experience in state service is extremely limited and that he had no experience in work dealing with juvenile offenders, he was placed in the position of Director of Administration of the Department of Youth Services. Career state employees in the Department were not even considered.

In addition to the above-mentioned consultants, the Department of Youth Services also clothes other consultants with administrative and supervisory responsibilities

over state employees. According to the department's organization chart, the Assistant Director of Administration for Personnel Management supervises a staff of nine and the Assistant Director of Administration for Fiscal Management supervises ten state employees. Both individuals are consultants.

Likewise, in the Department of Public Welfare, consultants occupy the following administrative positions: 3 of 5 Assistant Commissioners, 1 Assistant to the Commissioner, 1 Supervisor of Personnel, 1 Director of Project Management Office. Most of these positions are civil service, but career employees are not given the opportunity to compete for them.

STATE EMPLOYEES RE: CABINET REORGANIZATION

In 1969, a comprehensive plan for the reorganization of the administrative structure of the Commonwealth, entitled "An Act Establishing a Governor's Cabinet," was enacted into law.¹¹

For the purpose of advancing the objectives of this Act, the Legislature, in November, 1971, appropriated \$400,000 to the Commissioner of Administration in the "03" subsidiary account.²¹ The Commissioner was to regulate the expenditure of this money by the various Secretaries. It was to be used to acquire the services of qualified specialists in management, procedures and systems.

The act provided, however, that when such services were acquired the appointments should, so far as practicable in the judgment of the secretary, be made by promoting employees of the Commonwealth serving in positions which are classified under the Civil Service laws. This provision was rarely observed and most of the persons, whose services were contracted for, had never been employees of the Commonwealth, much less in positions classified under Civil Service.

There is another interesting feature to this situation. Many of the people appointed to positions in the various Secretariats can be classified as recurrent "03" payees because most of their recent job history consists of service to the Commonwealth on a consultant basis.

Examples of this practice are numerous. The Modernization System Unit, (MSU), an "03" operation itself within the Executive Office for Administration and Finance, served as the first stop for two persons who became consultants to the Secretariat of Human Services at annual salaries of \$17,500 and \$22,195, respectively.

¹¹Mass. St. 1969, Ch. 704

²¹Mass. St. 1971, Ch. 1002

MSU experience also paved the way for two of its personnel to become consultants to the Secretariat of Consumer Affairs. Other persons, now serving as consultants for various Secretariats, have served their "03" apprenticeship with the Executive Office for Administration and Finance and the Department of Public Welfare.

By way of illustration, we cite the case of one individual in order to show the facility with which a consultant can be kept on the state payroll, the Commissioner of Administration and the Governor willing. The chronological history of this consultant follows:

Dept. and Unit	Period Covered	Rate/Diem	Appropriation Item No.	Source of Funds*
Exec. Office for A&F MSU/OPPC	9/2/69 to 6/30/70	\$77.73/D	0451-1131	State
Exec. Office for A&F MSU	7/1/70 to 6/30/71	\$77.73/D	0451-1131	State
Exec. Office for A&F MSU	9/3/70 to 6/30/71	\$81.22/D	0451-1131	State**
Exec. Office for A&F MSU	5/1/71 to 5/14/71	\$81.22/D	0451-1131	State
Exec. Office for A&F OPPC/HUD	5/15/71 to 5/31/71	\$81.22/D	0451-1498	Federal
Exec. Office for A&F OPPC/HUD	6/1/71 to 6/14/71	\$81.22/D	0451-1498	Federal
Office of the Comm. Exec. Office for A&F	6/15/71 to 6/30/71	\$81.22/D	0451-1100	State
Exec. Office for A&F Office of the Comm.	7/1/71 to 7/31/71	\$81.22/D	0451-1100	State
Exec. Office for A&F OPPC/HUD	8/1/71 to 8/14/71	\$81.22/D	0451-1498	Federal
Exec. Office for A&F OPPC/HUD	8/15/71 to 8/31/71	\$81.22/D	0451-1498	Federal
Exec. Office for A&F OPPC/HUD	9/1/71 to 12/31/71	\$81.22/D	0451-1498	Federal
Exec. Office of Human Services — Human Services Adm.	1/3/72 to 6/24/72	\$94.10/D	0451-1000	State
Dept. of Public Welfare — Div. of Soc. Serv. Adm.	7/1/72 to 9/1/72	\$20,851/Yr.	1900-1000-03	State
Dept. of Public Welfare — Asst. Commr. for Research & Planning	9/1/72 to present	\$23,500/Yr.	1900-1000-03	State**

*In each and every instance this individual was compensated from the "03" subsidiary account.

**Compensation increased during term of contract.

***On December 20, 1972, the Director of Civil Service informed the Commissioner of Public Welfare, in writing, that this individual did not possess the statutory qualifications for this position. Regardless of this notification, the position is still held by this individual on an "03" basis.

STATE EMPLOYEES AS CONSULTANTS

The Legislative Post Audit and Oversight Bureau developed a list of "03" vendors, who also are, or were,

regular state employees, in an attempt to determine the extent to which state employees were receiving additional compensation from the "03" account for con-

sultant services rendered to the Commonwealth. It should be noted that there would be no violation of Section 21 of Chapter 30 of the General Laws¹¹ involved in this practice provided that the consultant services are performed outside the normal working hours of the state employee and are not directly related with the duties of his regular position.

The list contained over 2000 names of present employees or former employees who were being compensated from the "03" account during Fiscal Year 1972. The Bureau felt that the greatest potential use and return of time invested was in the area of tax compliance. It was felt that because the Comptroller had no way of developing tax statements at the end of the year, there was a possibility that some of these consultants may have overlooked the inclusion of these funds on their tax returns. Consequently, a complete list of such names was forwarded to Commissioner Nicholas Metaxas of the Department of Corporations and Taxation for his information and consideration.

Prior to transmitting this list to the Department of Corporations and Taxation, the Bureau compiled a random list of sixty-five names from it to determine the relationship between the individual's duties as a state employee and as a consultant. Selection of the names was based on those receiving the largest total amount of "03" payments on each computer printout page. In some cases the amounts were so large that two of three names were chosen from an individual page.

Because of the lack of sufficient information on the face of the payment voucher, it became impossible to determine if there was, in fact, a conflict of duties involved. Instead, an analysis was made of the extent of participation and of the type of people, and their present jobs.

Of the sixty-five chosen for this analysis, thirty were from one of the Commonwealth's institutions for higher learning. Of this group, nineteen were educators employed regularly by the Department of Education who, in addition, taught courses either at night in the Continuing Studies Program or a summer school or in-service training; one was an educator who performed consultant services for another agency; eight performed "03" consulting services for *two* state agencies in addition to their regular duties as educators; and two people performed "03" consulting services for *three* state agencies as well as performing their regular duties. The remaining thirty-five cases consisted of the following: eleven who entered state service as regular employees after having performed "03" consulting services; nine who terminated as state employees to accept higher paying "03" consulting positions; one who was a retiree; two who received leaves of absence to perform "03" consulting services; and twelve who performed consulting services during the same period they held regular positions in state services. Of the latter, four held part-time positions.

HALF-TIME EMPLOYEES

	Employee Grade	Employing Agency	Salary Rate Paid Per Year	"03" Payment	Source of "03" Funds
Case 1	16	Mental Health	\$ 5,272.80	\$ 4,326.52	Commission on Law Enforcement and Adm. of Criminal Justice
Case 2	26	Mental Health	10,182.64	6,187.50	Public Health Public Welfare and Executive
Case 3	29	Mental Health	12,956.84	19,824.80	Massachusetts Rehabilitation Commission
Case 4	26	Mental Health	10,182.64	9,130.00	Massachusetts Rehabilitation Commission

¹¹This section provides that "A person shall not at the same time receive more than one salary from the Treasury of the Commonwealth."

FULL-TIME EMPLOYEES

	Employee Grade	Employing Agency	Salary Rate Paid Per Year	"03" Payment	Source of "03" Funds
Case 1	30	A&F	\$27,105.00	\$ 4,923.00	Civil Service
Case 2	Governor Appointed	Executive	2,884.00	7,500.00	Public Safety
Case 3	23	Pub. Health	19,843.20	4,200.00	Agriculture
Case 4	29	Men. Health	21,595.08	11,481.25	Mass. Rehabilitation Commission
Case 5	28	Men. Health	22,955.40	28,006.50	Mass. Rehabilitation Commission
Case 6	31	A&F	27,050.40	6,565.00	Civil Service
Case 7	21	Men. Health	14,675.80	6,430.00	Mass. Rehabilitation Commission
Case 8	29	Men. Health	24,840.40	6,067.50	Mass. Rehabilitation Commission

The examination reveals that of the people performing consulting work in addition to their regular duties, the overwhelming majority come from the ranks of the higher salaried state employees.

As a result of the list submitted to the Department of Corporations and Taxation, the following response was received by the Legislative Post Audit and Oversight Bureau:

January 9, 1973

Mr. William H. Finnegan, Director
Post Audit and Oversight Bureau
Massachusetts General Court
14 Beacon Street
Boston, Massachusetts

Dear Mr. Finnegan:

I wish to take this opportunity to thank you and the members of the Bureau for making available to us your compilation of state employees who received "03" payments during the latter half of 1971.

Since the receipt of this list, we have extracted therefrom those persons who received \$1,000 or more in such payments for the six-month period. Our initial survey will be confined to these cases.

We are now in the process of verifying through return examination, correspondence and other means whether or not all "03" payments were included in the Massachusetts income tax returns of these recipients. It is still too early to project any definitive results. Preliminary reviews seem to indicate that some of this income may not have been reported.

As our investigation progresses, we will transmit to you such results of this project as may be consistent with the laws of the Commonwealth.

Very truly yours,
Nicholas L. Metaxas
Commissioner of Corporations
and Taxation

NLM/rmm

TAX REGULATIONS PERTAINING TO "03"

Federal Internal Revenue Regulations¹ (Sec. 1.60417) and the directives and regulations of the State Tax Commission² (G.L. 62, Sec. 33) require agencies of the Commonwealth to file information returns³ (Federal Forms No. 1096 and 1099, State Forms No. 6 and 6A) on salaries and fees paid individuals for services equalling \$600 or more which were not reported on W-2 Forms.

In addition, the Internal Revenue Service Revised Ruling 69-595 CB 242 clarified by the Technical Information Release No. 1026, December 31, 1969, stated that agencies participating in the Medicaid Program must file a return for payments of \$600 or more made to each doctor or other supplier of services under health-care plans.

The Internal Revenue Service notified the Executive Office for Administration and Finance that the Commonwealth was not complying with the before-mentioned regulations.

As a result, the Commissioner of Administration issued Administrative Bulletin 71-10 on September 19, 1972. Agencies were advised to withhold Federal and Massachusetts income taxes from payments made to certain "03" contractors under their supervision and control. They were also advised to prepare and file a W-2 form at the end of each calendar year listing total payments and deductions.

In addition, all payments to individuals totaling over \$600 in a calendar year must be reported on an annual information return⁴ (Federal Forms 1099 med. and 1099 misc., State Forms Nos. 6 and 6A) This includes physicians, dentists and other Medicaid providers, as well as foster parents.

The pertinent sections of this bulletin for the purposes of this report are:

I. WITHHOLDING REQUIREMENTS

"1. Under the Massachusetts Expenditure Code Manual, an 03 contractor, by definition, is *not* an employee. There are many instances, however, where an individual whose services are engaged under an "03" contract has many attributes of an employee — that is, where the state agency engaging his services has the right to direct and control him not only as to the result to be accomplished by his services, but also as to details and

means by which he accomplished it. For Federal and Massachusetts income tax purposes, any such "03" contractor is deemed an "employee" of the Commonwealth. Thus, Federal and Massachusetts income taxes must be withheld from payments to any such "03" and paid over to the appropriate taxing authorities, as if he were an "01" or "02" employee. In addition, a W-2 form must be prepared and filed at the end of each year as to amounts paid to and withheld from each such contractor during the year.

"2. In order to assure prompt and uniform decisions as to which "03" contractors are to be regarded as "employees" for income tax purposes and, therefore, subject to withholding, I have directed the Bureau of Personnel to make that decision at the time each AF-C2 is processed. Its decisions will be based on information received from IRS, and the Bureau will remain in direct communication with IRS to assure that each such decision is correctly made. Whenever the Bureau decides that an "03" contractor is an "employee" for tax purposes, it will insert the Symbol "W-2" in line 7 ("Other Pertinent Information") on each copy of the AF-C2 form. . . .

"7. It should be emphasized that the Federal and Massachusetts withholding requirements do *not* apply to all "03" payments, but only those to contractors deemed "employees" for income tax purposes. "03" payments to "independent contractors," as distinguished from "employees," are not subject to Federal or Massachusetts withholding, though some of them are subject to the reporting requirements described in the second part of this bulletin."

This administrative bulletin indicates clearly that the intent and purpose of the "03" subsidiary account, as set forth in the Code Manual, has been violated. It is no longer just the account out of which true consultants are compensated, but, because of the failure of the Executive Office for Administration and Finance to control and monitor "03" expenditures, has become another subsidiary account to be used for hiring state employees. There is one basic difference, however, and that is that the state employees hired under the "03" account need have no qualifications whatsoever. They are not subject to Civil Service requirements, nor veteran's preference, and their salary range is not regulated by the classification and pay plan of the Commonwealth.

GOVERNOR'S COMMITTEE ON PUBLIC SAFETY AND COMMITTEE ON LAW ENFORCEMENT AND ADMINISTRATION OF CRIMINAL JUSTICE

The Governor's Public Safety Committee was created within the Governor's office allegedly by an Executive Order issued by former Governor John A. Volpe, on September 28, 1966. There is no record of this Executive Order in the files of the Secretary of State, nor is there any break in the continuity of numbers affixed to such Orders which are on file. Subsequent Executive Orders, No. 60, 61, and 70, the first two issued by former Governor Volpe and the last by Governor Sargent, purport to amend the non-existent Order.

Despite the fact that its origin and status are dubious, the Committee has been funded by the General Court, upon the recommendation of the Governor, during the last several fiscal years in Account No. 04111-4000:

FISCAL YEAR	AMOUNT
1967	\$ 7,078
1968	35,800
1969	35,800
1970	99,800
1971	200,000
1972	430,220
1973	364,220

This money in each instance has been appropriated to the "03" subsidiary account. In addition, the Committee has received federal grants totalling \$52,982,485 between fiscal year 1969 and fiscal year 1973.

This Committee, under the provisions of Executive Order No. 60, dated July 25, 1968, is empowered to appoint an executive director, and such research, legal, clerical, and other staff as may be necessary, and to fix their salaries. In addition, the executive director and staff shall not be subject to Civil Service¹ (Mass. General Laws, Chapter 31).

The Committee on Law Enforcement and the Administration of Criminal Justice was created by Chapter 798 of the Acts of 1967. Its duties, established by the statute, are confined primarily to studies and information dissemination. The law does not authorize staffing.

This Committee, located within the Executive Office of Communities and Development, receives an annual appropriation of \$500, under Account No. 3200-1000, for ordinary expenses of its members.

While both committees exist as separate entities, they operate, functionally, as one and the same. The official committee stationery bears the heading "Committee on Law Enforcement and the Administration of Criminal Justice" and lists one Arnold Rosenfeld as its Executive Director, despite the fact that the statute does not authorize staffing. In addition, the committee expends state appropriated funds under this title although the appropriations are made to the "Governor's Public Safety Committee."

When queried about this situation, the Executive Director readily admitted that the names of the two committees are used interchangeably depending on which sounds more imposing in a given instance. Once again, we find the Executive Department and its subordinates interpreting the law to suit their own purposes.

As the State Auditor pointed out, in a report issued on July 27, 1971, "the Budgetary Control Register for this Committee is maintained by the accounting section of the Governor's office." This is consistent with the nature of the operation of this Committee. For all practical purposes, it is solely within the control of the Governor. Personnel are hired with his approval. The Proposal Review Board, which the Governor designates, has the authority to evaluate and approve or disapprove applications for grants made to the Committee. Furthermore, the Committee uses the "Invoice Warrant" system for paying the salaries of its staff. The Governor's Public Safety Committee makes payments to the Committee on Law Enforcement and the Administration of Criminal Justice as a vendor. The latter then issues salary payment checks to all staff personnel through the Governor's Accounting Office. Consequently, the names of the members of the staff do not appear as vendors in the Automated Financial Information System in the Comptroller's office.

The staff of the Post Audit and Oversight Bureau had the opportunity to examine an "in-house" audit report of the activities of this Committee prepared by auditors for the Federal Law Enforcement Assistance Administration (L.E.A.A.). This report, which was very critical of the Committee's activities, has not been made public.

It has been recommended by the State Auditor that legislation, consistent with federal requirements, be initiated to create a single committee to accomplish the purposes attributed to the Governor's Public Safety Committee by Executive Order.

This entire situation has been discussed with Attorney General Robert H. Quinn who serves as Chairman of

the Governor's Committee. The Attorney General agrees that the situation should be clarified, that there should be only one Committee, and that it should be established according to law.

Legislation to accomplish this purpose is appended to this report.

CONCLUSIONS

There is a legitimate basis for the continued existence of the "03" subsidiary account. Most, if not all, of the services made available by the several object codes within this account are such that they are not required on a day-to-day basis and ought not be considered as permanent in nature. Since they are required from time to time, however, a vehicle to provide them, when necessary, ought to be available.

The statutes do not spell out the manner in which consultants may be employed by the Commonwealth. The General Court, in 1963, determined that the use of consultants could best be handled from an administrative standpoint and mandated the Commissioner of Administration to make rules and regulations governing their use. This action was consistent with decisions of the Massachusetts Supreme Court relative to the authority of the Legislature to delegate power.¹

The General Court has defined the scope of the "03" subsidiary account in the Code Manual and then delegated the "working out of detail" to the Commissioner of Administration.

Rules and regulations governing the use of consultants have been promulgated by succeeding Commissioners of Administration and, in addition, several administrative bulletins have been issued on the subject. The fact remains, however, that, during the last two fiscal years (1971 and 1972), these rules and regulations have been honored more in their breach than in their observance. The manner in which they are ignored or waived amounts to an abdication of responsibility by the Commissioner of Administration, who is handpicked by the Governor for this position and who doubles as the Secretary of Administration in the Governor's Cabinet. This charge cannot be dismissed, moreover, by any attempt to assess blame on an agency head, the Budget Director, the Director of Personnel, or any other subordinate because, as has been previously stated in this report, not one cent can be expended for consultant purposes without the approval of the Commissioner of Administration. Complete control of "03" funds, once appropriated, rests with him and it is his responsibility to insure that his subordinates comply with the law and with the intent of the General Court.

The laxity and irresponsibility of the Commissioner of Administration, with respect to the control of the expenditure of the "03" funds during the period to which this report directs itself, has resulted in the "03" subsidiary account being diverted from its true intent and purpose as spelled out in the Code Manual. Instead of being used to acquire the services, when necessary, of consultants (NON-EMPLOYEES), it has become a vehicle for the employment of personnel who, for all intents and purposes, are state employees.

This diversion is further compounded because the Executive Department considers the "03" account as autonomous and has concluded that it is within its prerogatives to use the account for whatever purposes it deems desirable. This is clearly evidenced by the examples detailed in this report and by many more contained in the support files of the Post Audit and Oversight Bureau. In addition, the extended use by the Executive Department of its authorization to transfer funds between subsidiary accounts has enabled it to expend funds for "03" services far in excess of the amounts appropriated for that purpose by the General Court.

The problem, which exists relative to the "03" subsidiary account, is not unilateral, however. The budget procedure of the General Court, whereby funds are appropriated to this account, requires review and amendment. The present system is too general in nature and lends itself, gratuitously, to abuse. It is obvious that the specific intent of the Legislature must be made known to the Budget Director and the Comptroller. It is obvious, likewise, that the General Court, and, in particular, the Senate and House Ways and Means Committees, must be informed of the specific intent of the Governor.

To summarize, the failure of the Commissioner of Administration to effectively control and monitor the use of consultants by the Executive Department of the state government has caused the "03" subsidiary account to become an enigma. Its use has been divorced from its intent and purpose. Corrective measures are vital both in the budget procedure and the administration of the account. Recommendations to accomplish these, together with accompanying legislation, are contained elsewhere in this report.

¹In Opinion of the Justices (1952) 328 Mass. 674, the Court stated: "Where Legislature, by statute, lays down general policy to be pursued, it may delegate working out of detail to some officer or commission, whose acts in pursuance of general plan, although legislative in character, are valid."

FINDINGS OF FACT

- 1) Expenditures for consultant services by the Commonwealth have increased threefold during the last six fiscal years.
- 2) The Legislature has enunciated a general policy to be pursued with respect to expenditures from the "03" account for consultants and has delegated the responsibility for the proper management and control of this account to the Commissioner of Administration by mandating him to establish rules and regulations governing such expenditures.
- 3) The Commissioner of Administration is appointed by the Governor and is the executive head of the Executive Office for Administration and Finance. He also serves as the Secretary of Administration in the Governor's Cabinet.
- 4) Rules and regulations have been established and administrative bulletins issued by succeeding Commissioners of Administration governing the use of consultants, but these have not been enforced.
- 5) Complete control of "03" expenditures by the Executive Department is vested in the Executive Office for Administration and Finance and, more particularly, in the Commissioner of Administration.
- 6) No consultant can legally be hired by the Executive Department, nor can any expenditures legally be made from the "03" account, nor can any financial obligation legally be incurred, compensation for which is to be paid from this account, without the approval of the Commissioner of Administration.
- 7) The failure of the Commissioner of Administration to effectively control and monitor the use of consultants and to properly administer the "03" account has resulted in a multiplicity of abuses.
- 8) The Comptroller's records (Automated Financial Information System) indicate that approximately \$90,800,000 was expended from the "03" account for consultants during Fiscal Year 1972. In addition, approximately \$58,000,000 was expended for consultants by the Department of Public Welfare from the "07" account during this same period of time. This accounts for a total expenditure for consultant services of almost \$149,000,000 and, of this amount, approximately \$92,000,000 was appropriated by the Legislature. The balance consisted of federal funds, bond issues, and monies transferred from other subsidiary accounts into the "03" account.
- 9) A sum approximately \$80,000,000 was paid during Fiscal Year 1972 to "hidden consultants" whose names and the amounts received are not reflected in the Comptroller's Automated Financial Information System.
- 10) The budget procedure, as it relates to appropriations made by the General Court to the "03" account, gratuitously lends itself to abuse.
- 11) The "03" account, once the appropriations bill in which it is included becomes law, is, for all practical purposes, an autonomous account.
- 12) The Executive Department has taken advantage of this weakness in procedure and has used this account as it sees fit under the guise of "administrative flexibility."
- 13) Excessive transfers into the "03" account from other subsidiary accounts have been approved by the Budget Director despite the limitation placed upon him by the General Appropriations Act. These transfers come, primarily, from the "01" account. This enables the Executive Department to expend monies for consultants in amounts well in excess of those authorized by the Legislature.
- 14) The "03" account is used to employ individuals in circumvention of the civil service laws, rules and regulations.
- 15) Consultants have been admitted to the state employees' Group Insurance and Retirement systems at additional cost to the Commonwealth.
- 16) Consultants hold top administrative positions and supervise and direct the activities of permanent state employees.
- 17) Consultants used by the Department of Public Welfare for its Medicaid program are being compensated out of the "07" account instead of the "03" account.
- 18) Top echelon administrative personnel in the Executive Office for Administration and Finance are also on "03" payrolls.
- 19) State employees negotiate consultant contracts with their employing agency and then leave their positions for higher salaried consultant posts.

- 20) An employee of one consultant firm, which was under contract to a state agency, negotiated an individual contract for himself with the said agency and is currently supervising the activities of one office of this agency at a rate of compensation in excess of that received by the Commissioner of the agency.
- 21) Payments made to 367 consultants *prior* to the date of approval of their contracts by the Commissioner of Administrative Bulletin 71-18.
- 22) Consultants are defined by the Commissioner of Administration as "non-employees." Yet 455 consultants are members of the State Employees' Group Insurance Plan and at least 66 consultants enjoy membership in the State Employees' Retirement System.
- 23) Payments are made to consultants in excess of the "maximum limit of obligation" provision provided for in the AF-C2 form approved by the Commissioner of Administration. In the Department of Public Welfare, approximately \$110,000 was spent for police protection for various welfare offices, despite the fact that the "maximum limit of obligation" was set at \$25,000.
- 24) The Commissioner of Administration has indiscriminately used an assumed waiver power with respect to consultant contracts, resumes and disclosure statements. The absence of these documents make it impossible to evaluate a consultant's qualifications and hampers the effectiveness of a performance audit as to his contribution to a program.
- 25) The Commissioner of Administration has allowed consultants to "jump" from one agency to another for extended periods of time. According to the *Schedule and Description of Subsidiary Accounts* a consultant is hired for a limited, specified period of time. However, there are a number of cases where consultants have managed to stay on the payroll for over three years by jumping from one agency to another.
- 26) The Department of Public Welfare is using a special "03" payroll device that allows this agency to circumvent the hiring procedures of the Division of Civil Service and the Bureau of Personnel by transferring funds appropriated by the Legislature for permanent (01 subsidiary) and temporary (02 subsidiary) positions to the "03" subsidiary account. This special "03" payroll was originally intended to be for a four-month duration, terminating in March of 1970. However, as of November, 1972, there were 237 individuals still being paid from the special "03" payroll. The current cost of this payroll is approximately \$200,000 per month.
- 27) The Commonwealth lost \$128,000 because the Department of Public Health incorrectly computed the employer's share of group insurance premiums for consultants compensated from federal grants.
- 28) Consultants paid in whole or in part from federal grants and/or other non-state funds were improperly included with 100% state-funded employees. This fact was brought to the attention of the Group Insurance Commission by the Legislative Post Audit and Oversight Bureau. Consequently, supplemental billings of \$129,000 were issued by the Commission to the appropriate state agencies and this sum was recovered.
- 29) The State Comptroller is unable to substantiate reported welfare expenditures, since invoices are kept on file at the local welfare service offices with no preaudit performed by the Comptroller.
- 30) The Commissioner of Administration "froze" \$130,000 appropriated by the Legislature for 13 authorized permanent positions and the Budget Director approved the transfer of these funds to the subsidiary account 03 for a contract between the Erich Lindemann Mental Health Center and the Massachusetts General Hospital for a training program which had not been requested or authorized.
- 31) Monies expended for consultant reports are wasted because the Executive Office for Administration and Finance has failed to implement the necessary "monitoring" techniques to ensure that consultant funds are properly spent. \$1,200,000 was appropriated to the Executive Office for Administration and Finance for the purpose of designing and implementing management procedures to effect improvements in the administrative organization and operations of state government. The \$1.2 million was spent in developing these basic projects that were never implemented.

RECOMMENDATIONS

The Legislative Post Audit and Oversight Bureau recommends that legislation be filed which would:

- 1) require that the schedules filed by the Joint Committee on Ways and Means shall, with respect to the "03" subsidiary account, prescribe the appropriate account, prescribe the appropriations by object code and authorize the said committee to establish an "03" reserve fund to be expended under its direction. (See Appendix A)
- 2) preclude transfers out of the "01" subsidiary account. (See Appendix B)
- 3) statutorily establish the basic minimum requirements for the use of consultants by any agency of the Commonwealth. (See Appendix C)
- 4) preclude consultants from participation in the state employees' Group Insurance and Retirement systems unless provision is made therefor in their contract of employment. (See Appendix D)
- 5) preclude consultants from holding administrative positions wherein they supervise and direct the activities of state employees. Language to accomplish this purpose is contained in legislation attached hereto as Appendix C.
- 6) require the establishment of separate payrolls for state employees on the one hand, and for those who are in the service of the Commonwealth but are compensated out of federal or other non-state funds on the other. (See Appendix E)
- 7) require that federal funds be expended only after appropriation by the General Court, so far as this is consistent with federal requirements. (See Appendix F)
- 8) give full legal status to the Governor's Public Safety Committee and end the confusion which exists between that agency and the Committee on Law Enforcement and the Administration of Criminal Justice. (See Appendix G)
- 9) provide for an investigation and study by a special commission relative to the advisability and feasibility of providing independent status for the Comptroller of the Commonwealth. (See Appendix H)
- 10) The Bureau further recommends that the Joint Committee on Post Audit and Oversight request the Comptroller to abolish, by administrative action, the use of the "Invoice Warrant" and "Return of Advance" system of payment to the end that the Automated Financial Information System will reflect the names of all consultants hired by the Commonwealth and the amounts of payment received by each; and, also, so that the reporting requirements of the U.S. Internal Revenue Service and the Massachusetts Department of Corporations and Taxation may be complied with.

APPENDIX A

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED
AND SEVENTY-THREE.

AN ACT further Regulating the Expenditure of certain
Subsidiary Accounts by Departments, Offices,
Agencies, Boards, Commissions or Institu-
tions of the Commonwealth.

*Be it enacted by the Senate and House of Representatives in
General Court assembled, and by the authority of the same,
as follows:*

SECTION 1. Chapter 29 of the General Laws is
hereby amended by striking out section 27, as most
recently amended by section 48 of chapter 757 of the
acts of 1962, and inserting in place thereof the following
section: —

Section 27. Notwithstanding any provision of general
law, no department, office, agency, board, commission
or institution shall incur any expense, increase a salary,
or employ a new clerk, assistant or other subordinate,
unless an appropriation by the general court and an
allotment by the governor, sufficient to cover the expense
thereof, shall have been made. Appropriations by the

general court and allotments by the governor, shall be
expended only in the amounts prescribed in subsidiary
accounts established for the several appropriation ac-
counts in schedules established by, and on file with, the
joint committee on ways and means; provided, however,
that the amounts appropriated to the 03 subsidiary ac-
count shall be prescribed in such schedules in accordance
with object codes as set forth in the publication entitled
“Subsidiary Accounts and Expenditure Code Numbers
for Budgetary Control,” as approved by the joint com-
mittee on ways and means on March second, nineteen
hundred and sixty-four, and any amendments thereto;
and provided, further, that a reserve fund without an
object code may be appropriated in an 03 subsidiary
account which shall be expended by direction of the
joint committee on ways and means. Said committee, as
soon as may be after the general appropriation bill or any
other appropriation bill has the force of law conformably
to the constitution, shall file with the comptroller and
with the budget director, a certified copy of the schedules
aforesaid which relate thereto.

APPENDIX B

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED
AND SEVENTY-THREE.

AN ACT further Regulating the Interchange of Subsidiary Accounts set up on the books of any Department, Office, Agency, Board, Commission or Institution of the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 29 of the General Laws is hereby amended by striking out section 29, as most recently amended by section 35 of chapter 704 of the acts of 1969, and inserting in place thereof the following section: —

Section 29. Any subsidiary account set up as prescribed in the schedules referred to in section twenty-seven, on the books of any department, office, agency, board, commission and institution, receiving an appropriation from the commonwealth, may be increased or decreased by interchange with any other such subsidiary account within the same appropriation account under the following conditions: (a) that a request therefor from such department, office, agency, board, commission or institution, together with a certification that such transfer is required to meet an unforeseen emergency where funds otherwise are not available to protect the public interest, is approved in writing by the budget director, and, in the case of a department, office, agency, board, commission

or institution within any of the executive offices established by chapters six A and seven, that such request is also approved in writing by the secretary having charge of such executive office; (b) that such request contains the approval in writing of the joint committee on ways and means; and (c) that such request with the necessary approvals is filed by the budget director with the comptroller; provided, however, that no such decrease shall be permitted in the subsidiary account entitled "01 Salaries, Permanent Positions,".

The Comptroller shall require affidavits that expenditures are in accordance with the purpose of such appropriation or subsidiary accounts and do not exceed the unencumbered balance of the amounts provided therefor. The comptroller shall refuse to permit a disbursement or the incurring of any obligation if funds or allotments of funds under an appropriation account or subsidiary account under an appropriation account, sufficient to cover such disbursement or obligation are not available and shall immediately give notice of such refusal to the budget director, to the department, office, agency, board, commission or institution proposing the expenditure, and, in the case of a department, office, agency, board, commission or institution proposing the the executive offices established by chapters six A and seven to the secretary having charge of such executive office.

APPENDIX C

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED
AND SEVENTY-THREE.

AN ACT further regulating the Employment of Consultants by the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 29 of the General Laws is hereby amended by striking out section 29A, inserted by chapter 676 of the acts of 1963, and inserting in place thereof the following section: —

Section 29A. The commissioner of administration shall make, and may from time to time amend, rules and regulations governing the use of consultants in all departments, offices, boards, agencies, commissions and institutions and determine the rate of compensation for their services. Such rules and regulations shall be open to public inspection in the bureau of personnel, and copies thereof shall be made available to interested persons upon request. Such rules and regulations shall not be subject to the provisions of chapter thirty A. Such rules and regulations shall include, but need not be limited to the following requirements: (1) a request therefor on a form prescribed by the commissioner of administration specifically setting forth the need for such services; (2) a written contract specifically setting

forth the duties and responsibilities of the parties; (3) a resume setting forth the qualifications of the proposed consultant as they relate to the terms of the aforementioned contract; (4) a disclosure statement setting forth any other income derived by the proposed consultant from the commonwealth or any of its political subdivisions; (5) a statement setting forth the names and addresses of all persons with any interest in the said contract; provided, however, that none of the foregoing requirements may be waived; and provided, further, that no payment shall be made to any consultant for any services provided prior to the date upon which the form requesting said services as required by clause (1) has been approved by the commissioner of administration and a copy of the same filed with the comptroller. As used in this section the word "consultant" shall mean a person who, as a non-employee of the commonwealth, gives professional advice or service regarding matters in the field of his special knowledge or training and whose compensation is payable from a subsidiary account coded under "03" in the expenditure code manual. No person employed by the commonwealth as a consultant shall directly or indirectly supervise another temporary or permanent employee of the commonwealth.

APPENDIX D

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED
AND SEVENTY-THREE.

AN ACT providing that certain Consultants shall not be considered Employees of the Commonwealth for the purposes of Retirement and Group Insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The paragraph defining "Employee" in section 1 of chapter 32 of the General Laws, as most recently amended by section 1 of chapter 436 of the acts of 1972, is hereby further amended by adding the following sentence: — Notwithstanding the provisions of this paragraph, no consultant, as defined in section twenty-nine A of chapter twenty-nine, shall be deemed to be an

employee for the purposes of this chapter unless his agreement for employment as a consultant specifically provides therefor.

Section 2. The first sentence of paragraph (b) of section 2 of chapter 32A of the General Laws, as appearing in section 1 of chapter 813 of the acts of 1969, is hereby amended by inserting after the word "commonweath," in line 14, the words: — provided, however that no consultant, as defined in section twenty-nine A of chapter twenty-nine, shall be deemed to be an employee for the purposes of this chapter unless his agreement for employment as a consultant specifically provides therefor.

APPENDIX E

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED
AND SEVENTY-THREE.

AN ACT providing that Persons employed by the Commonwealth on federally Funded Programs shall be placed on a Separate Payroll.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 27 of chapter 29 of the General Laws, as most recently amended by section 48 of chapter 757 of the acts of 1962, is hereby further amended by inserting after the first sentence the following sentence: — A payroll separate and distinct from the payroll for persons in the employ of the commonwealth and paid from the funds thereof shall be prepared for persons in the employ of the commonwealth who are employed on programs funded by the federal government.

APPENDIX F

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED
AND SEVENTY-THREE.

AN ACT providing that Federal Funds received by the Commonwealth shall be expended only after Appropriation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 29 of the General Laws is hereby amended by inserting after section 12 the following section:

Section 12A. Funds received by the commonwealth from the federal government shall be expended only after appropriation for a particular purpose unless the law authorizing the payment of such funds to the commonwealth or any department, office, agency, board commission or institution thereof provides otherwise.

APPENDIX G

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED
AND SEVENTY-THREE

AN ACT renaming the Committee on Law Enforcement and the Administration of Criminal Justice as the Committee on Criminal Justice and providing it with all powers, duties and functions necessary to administer properly the omnibus crime control and safe streets and other federal acts within the commonwealth.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is, in part, to provide immediate assistance to local communities in controlling crime and delinquency; therefore, it is hereby declared to be an emergency law, necessary for the preservation of the public safety and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 17 of chapter 6 of the General Laws is hereby amended by striking out the words "the committee on law enforcement and administration of criminal justice" as added by section 1 of chapter 798 of the acts of 1967 and inserting in place thereof the words "the committee on criminal justice".

Section 2. Said chapter 6 is hereby further amended by striking out section 156, as inserted by section 2 of chapter 798 of the acts of 1967, and inserting in place thereof the following three new sections:

Section 156. There shall be a committee on criminal justice, hereinafter called the committee, to consist of the attorney general, the district attorneys of the several districts, the chairman of the parole board, the commissioner of correction, the commissioner of probation, the commissioner of public safety, the commissioner of youth services, the commissioner of the metropolitan district commission and the police commissioner of the City of Boston shall serve *ex officio*; and twenty-three persons to be appointed to one-year terms by the governor to consist of the following: one judge of the supreme judicial court or the appeals court; one judge of the superior court; one judge of a district court or the municipal court for the City of Boston; one member of the Massachusetts House of Representatives; one

member of the Massachusetts Senate; two chief executive officers of cities at least one of whom shall represent a city with a population of more than one hundred thousand persons; one selectman; four members of a city or town police department; provided, however, that no more than two of said members shall be chiefs of police; one county sheriff; one representative of the Massachusetts defenders committee; one representative of the judicial council; one representative of a local model cities program; three individuals knowledgeable and experienced in the prevention of juvenile delinquency and the rehabilitation of delinquent youths, provided, however, that at least two of said individuals shall not be employees of the commonwealth and shall be representative of community-based delinquency programs; and four other individuals none of whom shall be officers or employees of the commonwealth or any subordinate jurisdiction thereof, provided, however, that at least two of said individuals shall be residents of an area in the commonwealth which has high incidence of crime. Upon the expiration of the term of an appointive member, he shall serve until the qualification of his successor, who shall be appointed in like manner. Any vacancy among appointive positions on the committee due to causes other than the expiration of a term shall be filled for the remainder of the term by the governor. The chairman of the committee shall be designated from time to time by the governor.

The committee shall meet at least four times during the year and may meet at other times at the call of the chairman. The chairman shall determine the place for holding each meeting and shall send notice of any meeting to the executive director and to all committee members. The members of the committee shall serve without compensation, but shall be reimbursed for their expenses actually and necessarily incurred as committee members.

The committee shall: advise the governor on all phases of the adult and juvenile systems of law enforcement and criminal justice in the commonwealth; develop and revise a comprehensive law enforcement and criminal justice plan; study the problems and needs of and set priorities for improvements in response to audit and juvenile crime at state, regional, county, and local levels;

design and conduct programs to reduce crime, to rehabilitate offenders, to increase the effectiveness of law enforcement, and to prevent or reduce juvenile delinquency, to conduct research, collect statistics and other data, and encourage and facilitate the dissemination of law enforcement and criminal justice information; provide technical assistance related to law enforcement and criminal justice to regions and units of general local government; make grants and administer grant programs, including the development of appropriate procedures for the review of grant applications and the supervision, evaluation, and auditing of expenditures of projects funded by the committee, pursuant to the terms and conditions of Title I, Parts B, C, & E of the Omnibus Crime Control and Safe Streets Act of 1968 and Title I of the Juvenile Delinquency Prevention and Control Act of 1968; and encourage the development of effective coordination among the law enforcement agencies of the commonwealth and with those of other states.

The committee shall recommend to the governor candidates for appointment as executive director of the committee. The committee shall approve procedures for the review, and approval or disapproval, of applications to the committee for funding and shall establish substantive guidelines, standards, and criteria determining eligibility for funding.

The committee shall establish technical advisory committees in such areas of law enforcement and criminal justice as the committee deems necessary, to provide initial review of applications to the committee for funding and to perform other advisory functions. Any said advisory committee shall consist primarily of individuals with significant knowledge and experience in the particular area of concern. Technical advisory committee members shall serve without compensation. Members shall be appointed by the chairman of the committee for one year terms.

The committee shall have authority to enter into contracts and agreements with, and accept gifts, grants, contributions, and bequests of funds from any department, agency or subdivision of Federal, county, or municipal government and any individual, foundation, corporation, association, or public authority for the purpose of providing or receiving services, facilities, or staff assistance in connection with its work. Such funds shall be deposited with the state treasurer and may be expended by the committee in accordance with the conditions of the gift, grant, contribution, or bequest, without specific appropriation. The committee may expend for

services and other expenses any amounts that the general court may appropriate therefor.

Section 156A. There shall be a proposal review board to consist of the chairman of the committee on criminal justice, the attorney general; and nine other members of the committee designated annually by the governor and shall include the following: a member of the general court; a chief executive of a city or a selectman, a representative of the police aspect of the criminal justice system; a representative of the courts aspect of the criminal justice system; a representative of the prosecution and defense aspects of the criminal justice system; a representative of the correction, probation and parole aspects of the criminal justice system; a representative of the juvenile delinquency aspect of the criminal justice system; and two of the four members of the committee who are not officers or employees of the commonwealth nor any subordinate jurisdiction or agency thereof. The chairman of the committee on criminal justice shall also serve as chairman of the proposal review board. The proposal review board shall evaluate and approve or disapprove competitive applications to the committee for funding. Proposal review board members shall serve without compensation, but shall be reimbursed for their expenses actually and necessarily incurred as proposal review board members. Five members shall constitute a quorum. The proposal review board shall meet at the call of the chairman as may be necessary to conduct its business.

Section 156B. There shall be an executive director of the committee, hereinafter referred to as the executive director. He shall be appointed and may be removed by the governor, who shall select his appointee from among candidates recommended by the committee. The executive director shall receive such salary as the governor may determine. The executive director shall be qualified by training and experience in the field of criminal justice, and preferably shall be experienced in the planning, development and evaluation of criminal justice services and programs. He shall be the chief administrative and executive officer of the committee. He shall attend the meetings of the committee, and shall report to the committee upon the performance by the staff of their duties. The executive director shall, with the approval of the governor, establish such staff positions and employ such administrative, research, technical, legal, clerical, and other personnel and consultants as may be necessary to perform the duties of the committee. Such personnel shall receive such compensation as the executive director, with the approval of the governor, shall from time to time fix, and shall not be subject to the provisions of chapter thirty-one or of section nine A of chapter thirty.

Section 3. Section 8 of chapter 6A of the General Laws is hereby amended by striking out in lines 6 and 7, as appearing in section 3 of chapter 704 of the acts of 1969, the words "the committee on law enforcement and administration of criminal justice".

Section 4. All books, papers, records, documents and equipment in the custody of or maintained for the use of the committee on law enforcement and administration of criminal justice established pursuant to section one hundred fifty-six of chapter six of the general laws and the governor's public safety committee are hereby transferred to the custody and control of the committee on criminal justice created by section two of this act.

All moneys heretofore appropriated for expenditure by the committee on law enforcement and administration of criminal justice and the governor's public safety committee and remaining unexpended on the effective date of this act are hereby transferred to, and shall remain immediately available for expenditure by the committee on criminal justice.

All duly existing contracts, leases and obligations of said committee on law enforcement and administration of criminal justice and said governor's public safety committee shall remain in effect and shall be performed by

the committee on criminal justice. This act shall not effect any renewal provisions or option to renew contained in any such lease in existence on the effective date of this act. Without limiting the generality of the foregoing, all approvals of plans, projects and federal and state financial aid applications heretofore granted shall remain in full force and effect; provided, however, that nothing in this act shall prevent said committee on criminal justice from withdrawing such approval if such action is otherwise in accordance with law.

All gifts, grants, loans, contributions and bequests made to the committee on law enforcement and administration of criminal justice and the governor's public safety committee remaining unexpended on the effective date of this act shall be available for expenditure by the committee on criminal justice in accordance with the conditions of the gift, loan, contribution, of bequest without specific appropriation. All persons who are officers or employees of the committee on law enforcement and administration of criminal justice and the governor's public safety committee immediately prior to the effective date of this act are hereby transferred to the committee on criminal justice. Nothing in this act shall be construed to confer upon any officer or employee any rights not held prior to the transfer.

APPENDIX H

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED
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RESOLVE providing for an Investigation and Study by a Special Commission relative to the Advisability and Feasibility of providing Independent Status for the Office of Comptroller.

Resolved, That a special commission, to consist of three members of the senate, five members of the house of representatives, and three persons to be appointed by the governor, is hereby established for the purpose of making an investigation and study relative to the advisability and feasibility of providing independent status for the office of comptroller by removing the same from the executive office for administration and finance.

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